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No. 91-1420

In The
Supreme Court of the United States
October Term, 1991

JOAN GROWE, SECRETARY OF STATE OF THE STATE OF MINNESOTA, ET AL.,
Appellants,

vs.

JAMES EMISON, ET AL.,
Appellees.

Appeal from the United States District Court for the District of Minnesota

BRIEF OF APPELLANTS

HUBERT H. HUMPHREY, III
Attorney General
State of Minnesota

JOHN R. TUNHEIM
Chief Deputy Attorney General
(Counsel of Record)

JOCELYN F. OLSON
Assistant Attorney General

102 State Capitol
Saint Paul, Minnesota 55155
(612) 296-2351

Attorneys for Appellant
Joan Growe, Secretary of State
of the State of Minnesota

1992-EXECUTEAM / LAW DIV., 2595 N. Hamline Ave., St. Paul, MN 55113 • 612/633-1443 • 800/747-8793

JOHN D. FRENCH
MICHAEL L. CHEEVER
THOMAS L. MCMASTERS
FAEGRE & BENSON
2200 Norwest Center
90 South Seventh Street
Minneapolis, Minnesota 55402-3901
(612) 336-3000

PETER S. WATTSON
Senate Counsel & Research
G-17 State Capitol
St. Paul, Minnesota 55155
(612) 296-3812

Attorneys for the Seventy-Seventh Minnesota State House of Representatives and the Seventy-Seventh Minnesota State Senate, Appellants

MICHAEL O. FREEMAN
Hennepin County Attorney
KERRY W. MEYER
Assistant County Attorney
C-2000 Government Center
Minneapolis, Minnesota 55487
(612) 348-5550

Attorneys for Appellant Patrick O'Connor, Hennepin County Auditor, Individually and on Behalf of All County Auditors of the State of Minnesota

ALAN W. WEINBLATT
WEINBLATT & DAVIS
1616 Pioneer Building
336 North Robert Street
St. Paul, Minnesota 55101
(612) 292-8770

Attorneys for Appellants Patricia Cotlow, Phillip Krass Sharon LaComb, James Stein and Theodore Suss

QUESTIONS PRESENTED

1. Was the federal court required by the principles of federalism and comity articulated in Scott v. Germano, 381 U.S. 407 (1965), to abstain and defer to the state court where parallel actions challenging the state's legislative and congressional districts were filed in each court?

2. Was the federal court barred by the Full Faith and Credit Act and the doctrines of collateral estoppel and mootness from adopting a legislative redistricting plan that was directly contrary to a prior state court legislative redistricting judgment?

3. Is the federal court's finding of a Voting Rights Act violation, made in the context of a wholly undeveloped factual record, clearly erroneous and contrary to law?

4. Where a federal court draws new legislative and congressional districts, may it totally disregard discernable state redistricting policy as set forth by the state legislature and the state court?

LISTING OF PARTIES

Appellants

Joan Growe, Secretary of the State of Minnesota; Patricia Cotlow, Philip Krass, Sharon LaComb, James Stein, and Theodore Suss, individually and on behalf of all Citizens of Minnesota similarly situated; Patrick O'Connor, Hennepin County Auditor, individually and on behalf of all County Auditors of the State of Minnesota; the Seventy-seventh Minnesota State House of Representatives; and the Seventy-seventh Minnesota State Senate.

Appellees

James Emison, Judy Fairbanks, Marie Iverson, Ken Dean, Steve Castillo, Lew Freeman, and Yao Lo, individually and on behalf of all Citizens and Voters of the State of Minnesota similarly situated; Duane Benson, Terry Dempsey, Delores Hettig, Richard Harmon, David E. Peterson, E.M. Patricia Pidcock, and Frank Ringsmuth; and Mark Lundgren, Carver County Auditor, individually and on behalf of all County Auditors of the State of Minnesota.

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Appellants,

vs.

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Appellees.

**Appeal from the United States District Court
for the District of Minnesota**

CITATION TO OPINION AND JUDGMENT BELOW

The February 19, 1992, Memorandum Opinion and Order is published: Emison v. Growe, 782 F. Supp. 427 (D. Minn. 1992). The February 19, 1992, Judgment issued by the three-judge federal court is not officially reported. The order and judgment were filed in the United States District Court for the District of Minnesota, Fourth Division, under Civil File Number 4-91-202, and are set forth in the Appendix to Jurisdictional Statement at A-11 and A-

71.[1] The federal court made minor corrections to its February 19, 1992, Memorandum Opinion in an order dated April 2, 1992. JA-42.

JURISDICTION

The Order and Judgment from which this appeal was taken were filed on February 19, 1992. The Notice of Appeal was timely filed in the district court on February 26, 1992. A-362. This Court has jurisdiction under 28 U.S.C. § 1253. The appeal is from a permanent injunction issued by a district court of three judges. See A-92.

The Court's jurisdiction does not extend to the orders and final judgment of the parallel Minnesota state court redistricting action, Cotlow v. Growe, Court File Nos. C8-91-985 & MX 91-001562 (Minn. Dist. Court, Special Redistricting Panel). The state court's judgment entered January 30, 1992, adopting a legislative redistricting plan, A-355, was not appealed and became final and unappealable on April 29, 1992. See Minn. R. Civ. App. P. 104.01.

CONSTITUTIONAL, STATUTORY, AND OTHER PROVISIONS INVOLVED

Pursuant to Supreme Court Rule 24.1(f), the constitutional, statutory and other provisions involved in this case are set out in the Appendix to Jurisdictional Statement at A-373. In addition, the

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[1]References to the Appendices and Record in this action are denoted as follows:

Appendix to Jurisdictional Statement	-- A-#
Appellees' Supplemental Appendix	-- SA-#
Joint Appendix	-- JA-#
Appendix to Brief of Appellants	-- ABA-#
Record (Docket Number of Document in Federal District Court's File)	-- R-#

legislative redistricting plan enacted by the State of Minnesota, Act of May 29, 1991, ch. 246, 1991 Minn. Laws 741 (codified at Minn. Stat. §§ 2.043-2.703 (Supp. 1991)) (hereafter referred to as "Chapter 246"), as modified by the state court's December 9, 1991, order, is set out in the Appendix to Jurisdictional Statement at A-265 through A-354. Cotlow v. Growe, Court File Nos. C8-91-985 & MX 91-001562 (Minn. Dist. Court, Special Redistricting Panel Dec. 9, 1991).

STATEMENT OF THE CASE

This appeal is from a final judgment of the federal district court which adopted legislative and congressional redistricting plans for the State of Minnesota. The federal court rejected the 1991 legislative redistricting plan enacted by the State of Minnesota, Chapter 246, and drew a completely different plan. The federal court issued its legislative redistricting plan after final judgment had been entered in a parallel state court redistricting action. The state court had adopted a legislative redistricting plan that was based on Chapter 246.

The federal court issued its congressional redistricting plan despite the ongoing and parallel efforts of the state court to adopt a congressional redistricting plan. The federal court's plan did not adhere to the boundaries adopted by the Legislature in its congressional redistricting plan, Senate File 1597. A-53 to A-56.

The federal court erred by failing to defer to the parallel state court action and by ignoring the 1991 legislative redistricting law and other expressions of state redistricting policy. The background of the Legislature's redistricting efforts and of the parallel state court redistricting action, in addition to the procedural history of this federal court action, are therefore significant to this appeal.

Appellants include Joan Growe, the Secretary of State of Minnesota, who was confronted by conflicting plans of legislative and congressional redistricting; the Minnesota House of Representatives and Senate; a representative of all Minnesota local election officials; and Patricia Cotlow, et al., who are the original plaintiffs in the parallel state court action as well as the intervening plaintiffs in the federal district court suit.

A. Legislative Redistricting Efforts.

The Minnesota Legislature's redistricting efforts began before the 1990 census data became available. Computer equipment was purchased and technical personnel were hired; House and Senate Committees on Redistricting, as well as a joint subcommittee on redistricting, were appointed; formal and informal meetings and hearings were held around the state regarding redistricting; and particular efforts were made to obtain the views of minority group leaders. See A-393 to A-409; A-412 to A-420; A-436 to A-439; ABA-34 to ABA-41; ABA-44 to ABA-55.

The Legislature's legislative redistricting plan, Chapter 246, was drafted in the spring of 1991, once final census data became available. The plan's authors made concerted efforts to create districts which would enhance the representation of minority voters.[2] Their plan was begun with "footprints" of three minority senate districts in Minneapolis and Saint Paul. See A-418 to A-419; ABA-34 to ABA-41; ABA-43. These districts were the first districts to be discussed by the Legislature at a public hearing on May 3, 1991. ABA-34 to ABA-41; ABA-43. The remaining

[2]One of the goals unanimously adopted by the Legislature was the creation of a legislative redistricting plan which increased the opportunity for minority group members to be elected. A-378.

districts were then drawn around the minority district footprints. A-415 to A-417; ABA-41. When the legislative redistricting plan was proposed to the Senate Committee on Redistricting on May 15, 1991, the leaders of a variety of minority interest groups endorsed its minority districts and applauded the Legislature's efforts in working with the minority communities on the bill. See ABA-44 to ABA-55.[3]

The Legislature adopted its legislative redistricting plan, Chapter 246, at the end of its session in May, 1991. Governor Arne Carlson attempted to veto the bill but failed, and the bill became law without his signature. Litigation regarding the validity of the law was resolved by the Minnesota district court on August 2, 1991, which ruled that Chapter 246 was properly enacted. Seventy-Seventh Minnesota State Senate v. Carlson, Court File No. C3-91-7547 (Minn. Dist. Court, 2d Judicial Dist. Aug. 2, 1991). No appeal was taken from this judgment.

The language of Chapter 246 attempted to describe each of Minnesota's 201 legislative districts by the physical features of its boundaries. The State Revisor of Statutes created the written descriptions by reference to maps of the redistricting plan which had been produced by the plan's authors on the Legislature's computers. The majority of the Revisor's written boundary descriptions were accurate, but many contained technical errors of description. For example, some descriptions contained erroneous directions, such as "westerly" when "easterly" was intended. Other descriptions contained misspelled or misidentified street names, power lines, creeks, or railways. See, e.g., A-268 to A-274

[3]Similar testimony was heard by the House Committee on Redistricting on May 15, 1991. Because the microphones were inadvertently not attached to the tape recorder, no transcript of that hearing is available.

(annotations to state court modifications to Chapter 246). Other errors arose when portions of townships which are surrounded by a separate city were not joined in the same district as the city, resulting in noncontiguous districts. See, e.g., A-277. In two instances, cities were placed in two different districts, inadvertently resulting in both double representation and unacceptable population deviations. See, e.g., A-303.

The Legislature recognized that the technical defects in Chapter 246 needed to be corrected. In August, 1991, the Senate and House Committees on Redistricting proposed bills, Senate File 1596 and House File 1726, which attempted to correct the defects in Chapter 246 and to make it clearer and more stylistically consistent.[4] When the Legislature returned to session in early January, 1992, it adopted Senate File 1596. SA-120. This technical corrections bill, however, was vetoed by Governor Carlson on January 10, 1992. The Senate voted successfully to override the veto, but no override attempt was made in the House of Representatives.

In January, 1992, the Legislature also adopted a congressional redistricting plan, Senate File 1597. R-84 to R-85; R-115. This plan had been proposed by the House and Senate Committees on Redistricting in October, 1991. After hearings and further debate and revisions, the plan was adopted. Governor Carlson vetoed the plan on January 10, 1992. The Senate successfully voted to override the veto, but the House of Representatives did not attempt to override.

[4]This plan was endorsed unanimously by the Minnesota/Dakotas State Conference of the National Association for the Advancement of Colored People. A-366; A-368.

B. The State Court Redistricting Action.

Litigation regarding Minnesota's legislative and congressional redistricting efforts was first commenced by the Cotlow plaintiffs in the Minnesota state district court on January 24, 1991. The case is styled as Cotlow v. Growe, Court File Nos. C8-91-985 & MX 91-001562 (Minn. Dist. Court, Special Redistricting Panel). The Cotlow plaintiffs sought a declaratory judgment that Minnesota's 1982 legislative and congressional redistricting plans violated the Minnesota and United States constitutions. A-174.[5] The Complaint further requested the state court to adopt legislative and congressional redistricting plans if the Minnesota Legislature did not timely do so. A-186 to A-188.

The Minnesota Supreme Court appointed a three-judge panel, consisting of one appellate court judge and two district court judges, to preside over the case. A-196. Subsequently, the parties to the case stipulated that the 1982 legislative and congressional districts were constitutionally invalid under the Minnesota and federal constitutions and could not be used for any purpose except required elections to fill vacancies. A-192.

Thereafter, persons purporting to represent Minnesota Republican interests were permitted to intervene in the Cotlow suit as additional plaintiffs. These Republican plaintiffs fully participated in all aspects of the Cotlow case.

After Chapter 246 was enacted, its constitutionality was challenged in the state court action. See ABA-26 to ABA-27. All

[5]The legislative districts were originally created by the federal court in LaComb v. Growe, 541 F. Supp. 161 (D. Minn. 1982), and subsequently adopted into law by the Minnesota Legislature, Act of May 19, 1983, ch. 191, 1983 Minn. Laws 477. The congressional districts were created by the same court in LaComb v. Growe, 541 F. Supp. 145 (D. Minn.), aff'd sub nom. Orwoll v. LaComb, 456 U.S. 966 (1982).

parties and the state court recognized that many of the plan's district boundary descriptions contained errors. See A-233. During the fall of 1991, the state court held several hearings and issued several orders narrowing the scope of the claims before it and establishing the criteria to be used in adopting a legislative redistricting plan. See A-202; A-209; A-218; A-227; A-234. The state court held that the defects were not so pervasive as to invalidate the plan and, relying on this Court's precedents, it attempted to adhere to Chapter 246 to the fullest extent possible in the plan it adopted. See A-224; A-244; A-258.

The state court addressed the defects in Chapter 246 in two steps. It first sought to construe the law in accordance with Minnesota principles of statutory construction to resolve the ambiguities in the written descriptions. See A-259; A-261 to A-262.[6] The state court was guided in this effort by the legislative history of Chapter 246, which includes maps of the plan which were drafted and used by the legislators in committee and on the floor of the House and Senate. See A-228 to A-229; A-257 to A-258; cf. R-44; R-46; R-110 to R-116 (maps and reports submitted to the federal court). In the few instances where defects could not be resolved through statutory construction, the state court modified the law. A-262.[7]

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[6]Many of Minnesota's rules of statutory construction are codified. See Minn. Stat. §§ 645.16-.43 (1990).

[7]The state court did not adopt all the changes which the Legislature had proposed and eventually adopted in Senate File 1596. Many of the changes proposed by the Legislature merely improved the plan's style and clarity. The state court did not feel at liberty to make these nonessential changes to Chapter 246. See A-261 to A-262. Most of the defects in Chapter 246 could be corrected in only one way consistently with the act's legislative history. Where there were alternative means of correcting the defects, however, the state court adopted its own solutions rather than incorporating the changes proposed by the Legislature in Senate File 1596.

The state court also reviewed Chapter 246 to ensure that it met the requirements of the Voting Rights Act, 42 U.S.C. § 1973. The court requested briefs on the issue and heard arguments relating to that issue at two hearings. See A-219; A-226; A-228. In fact, no party to Cotlow (or to the subsequently filed federal cases) has ever alleged that Chapter 246 violates the Voting Rights Act. A-256. Upon its own examination, the state court, after full review of the parties' submissions, held that Chapter 246 did not violate the Voting Rights Act. A-259.

On November 21, 1991, the state court issued its legislative redistricting plan in the form of discrete changes to Chapter 246. Because of the difficulty of accurately describing the physical boundaries of districts, the state court issued its plan in preliminary form and sought comment from the parties regarding the plan. A-234; A-248. On December 9, 1991, the state court issued its final Order for Judgment, subject to the injunction which had been issued by the federal court on December 5, 1991, barring further proceedings in the state court action. A-141; A-249; A-259. The state court explained the changes it made to Chapter 246 in annotations to its plan. E.g., A-268; A-271; A-272. After this Court vacated the federal court's injunction, the state court entered final judgment implementing its legislative redistricting plan on January 30, 1992. A-355; see A-166 (Cotlow v. Emison, 112 S. Ct. 855 (Jan. 10, 1992) (mem.)).

The state court also addressed the congressional redistricting issues raised by the Cotlow plaintiffs' complaint. Because the Legislature had not enacted a congressional redistricting law in 1991, the state court deemed it necessary to await further action by the Legislature when its session resumed in early January, 1992. See A-264; A-442. The state court made clear to the parties, however, that it intended promptly to address the issues before it

regarding congressional redistricting in the event the Legislature failed to enact a congressional plan. The state court took appropriate procedural steps in anticipation of adopting a congressional redistricting plan. See A-203; A-210; A-259 to A-260; A-360.

The state court's efforts to address congressional redistricting issues were thwarted temporarily by the federal court's injunction of the state court proceedings on December 5, 1991. After the injunction was vacated on January 10, 1992, and after the Legislature's congressional redistricting plan was vetoed on the same date, the state court received proposed congressional redistricting plans and briefs regarding them. See A-360. On February 17, 1992, the state court held a hearing regarding the proposed congressional redistricting plans. A-360.

The state court's proceedings with respect to congressional redistricting were again thwarted by the federal court when the federal court issued its congressional redistricting plan on February 19, 1992. By March 3, 1992, the state court was prepared to issue its congressional redistricting plan but chose not to do so to avoid a conflict with the plan and injunction issued by the federal court. A-445 to A-446; ABA-3 to ABA-4. After this Court noted probable jurisdiction of this appeal, the state court issued its congressional redistricting plan on April 15, 1992. ABA-1. The state court's plan will not be implemented unless this Court vacates the judgment entered by the federal court. ABA-4.

C. The Federal Court Redistricting Action.

The federal court action is a consolidation of two separate cases. The first federal case was filed by the Emison plaintiffs on March 18, 1991, after the state court action had already been commenced. It is styled as Emison v. Growe, Civil File No. 4-91-

202 (D. Minn.). The Emison plaintiffs alleged that Minnesota's 1982 legislative and congressional districts violated the United States Constitution and that certain of the 1982 legislative districts further violated Section 2 of the Voting Rights Act, 42 U.S.C. § 1973. See A-73. The Emison plaintiffs are represented by the same counsel who has represented the Republican intervening plaintiffs throughout the state court action.

The second federal case was commenced by the Benson plaintiffs on August 9, 1991, after Chapter 246 was enacted and the 1982 legislative districts had been repealed. It is styled as Benson v. Growe, Civil File No. 4-91-603 (D. Minn.). The Benson plaintiffs, who are essentially the Minnesota Republican legislative leadership, alleged that Chapter 246 violated the Minnesota and United States Constitutions. The complaint did not allege that Chapter 246 violated the Voting Rights Act. See SA-63.

A three-judge panel was appointed pursuant to 28 U.S.C. § 2284 to hear both federal cases, and the two cases were consolidated. A-92; A-104. On August 21, 1991, the federal court denied motions by the Legislature and the Secretary of State asking the court to defer to the pending state court action. A-104. It also denied, for the time being, the Emison plaintiffs' motion to enjoin the state court action. Id.

On December 5, 1991, after the state court had issued its preliminary legislative redistricting plan, the federal court enjoined all further proceedings in the state court action. A-160. An appeal was immediately made to this Court and, on January 10, 1992, this Court vacated the federal court's injunction. A-166 (Cotlow v. Emison, 112 S. Ct. 855).

On February 19, 1992, three weeks after the state court had entered its final judgment adopting a legislative redistricting plan,

the federal court adopted its own legislative redistricting plan. A-11. The federal court plan gave absolutely no weight or deference to either Chapter 246 or the state court plan. A-42 to A-44. At the same time, and without hearing, the federal court issued a congressional redistricting plan, which plan was drafted from scratch without any apparent consideration of state policies or needs. Id. The federal court permanently enjoined Minnesota's election officials from conducting elections under any other plans. A-71 to A-72. Judge MacLaughlin dissented from the federal court's order and judgment to the extent it related to legislative redistricting.

Appellants filed their notice of appeal to this Court on February 26, 1992. A-362. Appellants applied for a stay of the federal court's February 19, 1992, order and judgment pending consideration of this appeal. On March 11, 1992, Justice Blackmun granted the application for a stay with respect to the federal court's legislative redistricting plan, Growe v. Emison, Docket No. 91-1420 (U.S. Blackmun, Circuit Justice March 11, 1992), but denied the application for a stay with respect to the federal court's congressional redistricting plan. Absent further intervention by this Court, Minnesota's 1992 legislative elections will be conducted pursuant to the January 30, 1992, judgment entered in the state court action and its 1992 congressional elections will be conducted pursuant to the February 19, 1992, judgment entered in the federal court action.

SUMMARY OF THE ARGUMENT

The federal court's judgment adopting a legislative redistricting plan should be vacated on four separate grounds. Two of these grounds also require that the federal court's judgment adopting a congressional redistricting plan be vacated.

First, the federal court should have deferred to the parallel state court redistricting action. Under the abstention doctrine established in Scott v. Germano, 381 U.S. 407 (1965) (per curiam), the State of Minnesota, through its legislature and judiciary, should have been permitted to resolve all claims relating to both legislative and congressional redistricting without the intrusion of the federal court. The policies that underlie the abstention rule--federalism, state sovereignty in election matters and avoidance of conflicting judgments--remain sound and the rule should be reaffirmed by this Court.

Second, the federal court erred in adopting a legislative redistricting plan after the state court had entered judgment adopting its own legislative redistricting plan. Under the Full Faith and Credit Act, 28 U.S.C. § 1738, and the doctrines of collateral estoppel and mootness, the federal court was required to respect the state court judgment and to dismiss the claims in the federal action relating to legislative redistricting.

Third, the federal court's sua sponte finding that Minnesota's 1991 legislative redistricting plan, Chapter 246, and the state court's legislative redistricting plan failed to remedy a perceived Voting Rights Act violation was clearly erroneous and contrary to law. Even if the federal court acted properly in reviewing these plans, it erred by not applying the three part test established by this Court in Thornburg v. Gingles, 478 U.S. 30 (1986). Under this test, no Voting Rights Act violation could have been found. Instead, the Voting Rights Act was used by the federal court as a pretext to substitute its will for the policy choices made by the State of Minnesota.

Fourth, even if the federal court acted properly in adopting legislative and congressional redistricting plans, its judgment should be vacated because the plans it adopted fail to adhere to

discernible state policy. The federal court's legislative redistricting plan does not follow Chapter 246 to the extent possible, and its congressional redistricting plan does not incorporate Senate File 1597 to the extent possible.

ARGUMENT

I. THE FEDERAL COURT WAS REQUIRED TO DEFER TO THE PARALLEL STATE COURT ACTION UNDER THE ABSTENTION PRINCIPLES OF SCOTT V. GERMANO.

More than a quarter of a century ago, in the wake of the landmark decision in Reynolds v. Sims, 377 U.S. 533 (1964), this Court established a bright line abstention rule in redistricting cases, marking an important principle of federalism from which it has never wavered. In Scott v. Germano, 381 U.S. 407 (1965) (per curiam), the Court reaffirmed that the power to redistrict lies with the states and ruled that federal courts must defer to state legislatures and state courts in redrawing legislative and congressional boundaries. The rule's limits are clear and well-defined. The federal courts must abstain at least until the state institutions have had a reasonable opportunity to redistrict. State courts must provide an adequate opportunity for constitutional and statutory challenges to be made. Only if the state institutions fail to complete the task or fail to make timely progress may the federal courts intervene, and then only to the extent necessary to ensure compliance with constitutional and statutory requirements. In performing this function, the federal courts must follow all state policies with respect to redistricting.

In Germano, the Court unequivocally stated its support not only for the role of state legislatures, but for the role of state courts in the redistricting process: "The power of the judiciary of a State

. . . to formulate a valid redistricting plan has not only been recognized by this Court but appropriate action by the States in such cases has been specifically encouraged." Id. at 409.[8] The Court has repeatedly emphasized the primary role that state institutions have in resolving redistricting issues. E.g., Chapman v. Meier, 420 U.S. 1, 27 (1975) ("We say once again what has been said on many occasions: reapportionment is primarily the duty and responsibility of the State through its legislature or other body, rather than of a federal court.").

Federal courts have almost uniformly recognized both the states' vital interest in redistricting and the abstention doctrine established in Germano and, as a result, have deferred to parallel state court redistricting proceedings.[9] E.g., Bianchi v. Griffing, 393 F.2d 457, 461 (2d Cir. 1968); Badham v. Eu, 568 F. Supp. 156, 158 (N.D. Cal.), aff'd sub nom. Badham v. United States Dist. Court, 721 F.2d 1170 (9th Cir. 1983); Avens v. Wright, 320 F. Supp. 677, 686 (W.D. Va. 1970); Mahoney v. Burkhardt, 299 F. Supp. 787, 789 (D.N.J. 1969). Most recently, in California, a

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[8]Germano involved a federal district court which refused to defer to a parallel state court redistricting action in Illinois. This Court directed the federal district court to defer to the state court action and to enter an order fixing a "reasonable time" within which "appropriate agencies of the State of Illinois, including its Supreme Court, may validly redistrict the Illinois State Senate . . . . " Id.

[9]Although a federal court is generally obligated to exercise jurisdiction over the claims before it, see Colorado River Water Conservation Dist. v. United States, 424 U.S. 800, 817 (1976), in certain instances public policy dictates that federal courts defer to the adjudication of claims in state court. E.g., id. at 818-19; Burford v. Sun Oil Co., 319 U.S. 315, 331-34 (1943). In particular, a federal court should defer to an ongoing state court action when vital state interests are implicated and adequate opportunity exists in the state proceedings to raise constitutional challenges. See Middlesex County Ethics Comm. v. Garden State Bar Ass'n, 457 U.S. 423, 432 (1982); Younger v. Harris, 401 U.S. 37, 44-45 (1971).

federal district court deferred to a parallel state court redistricting action citing Germano. Members of the Cal. Democratic Congressional Delegation v. Eu, Court File No. C-91-3383, slip op. at 19 (N.D. Cal. March 3, 1992) ("The line of United States Supreme Court and circuit court decisions since Scott v. Germano in 1965 and Younger v. Harris in 1971 is virtually unbroken, all leading to the same conclusion.").

The important policies behind the abstention rule in redistricting cases remain sound. First, the states' power to establish election districts and draw their boundaries is an important cornerstone of federalism, any retreat from which will cause inherent harm to the states. State constitutions uniformly grant state institutions the power to draw legislative district boundaries, e.g., Minn. Const. art. IV, § 3, and the United States Constitution grants the states the power to redraw congressional district boundaries, U.S. Const. art. I, § 4. Second, states have a strong interest in ensuring not only the integrity of the elections that are held within their borders, but also the integrity of the election districts that are established within their borders. Elections and election districts are, of course, uniquely intrastate; districts nowhere cross state lines to create issues of special federal significance. As instrumentalities of the states, state courts are best able both to effectuate the state's vital policy interests and to ensure that all constitutional and statutory requirements are followed. Third, state and federal courts cannot both separately redraw legislative and congressional district lines. Only one set of boundaries can exist. In addition to the obvious problems caused by conflicting judgments, including voter and candidate confusion, waste of resources, duplication of effort, and a lack of finality, separate judgments cause inherent harm to the integrity of the judiciary.

Parallel redistricting actions were pursued in Minnesota state and federal courts beginning in early 1991. The relevant claims raised in each case were the same: plaintiffs alleged that Minnesota's 1991 legislative redistricting plan (Chapter 246) and its 1982 congressional redistricting plan violated state and federal constitutional requirements.[10]

The state court in Cotlow v. Growe recognized and adhered to the doctrine established in Germano in denying a motion asking the state court to defer to the parallel federal court action. A-220 to A-223. The state court emphasized the significant policy concerns underlying Germano and refused to abdicate its redistricting responsibilities, stating:

> The integrity of elections and the integrity of legislative apportionment are vital to this state's governance. The strong state interest in guaranteeing rights of political participation require maintaining control over reapportionment, a matter of particularly local concern. A state's judiciary, as well as its legislature, is charged with taking an active part in preserving these interests. See Scott v. Germano . . . .

A-221. See also A-248.

Secretary of State Growe and the Minnesota Legislature moved the federal court to defer to the ongoing state court action based on the abstention doctrine established in Germano. The federal court denied the motion on August 21, 1991, A-103, and

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[10]The federal action initially involved allegations of Voting Rights Act violations. These allegations related to Minnesota's 1982 legislative districts and became irrelevant when those districts were repealed by Chapter 246. See, e.g., Kremens v. Bartley, 431 U.S. 119, 128-29 (1977) (case rendered moot when relevant statute repealed). Section 69 of Chapter 246 provides "Minnesota Statutes 1990, sections 2.019 [and] 2.042 [through] 2.702, are repealed." Act of May 29, 1991, ch. 246, § 69, 1991 Minn. Laws 781.

began preparing its own redistricting plans and hearing substantive motions, see A-119; A-128; A-132; A-138; A-162. Far from deferring to the parallel state court action, the federal court subsequently enjoined all further state court proceedings just as the state court was prepared to enter its judgment adopting a legislative redistricting plan. A-141; A-160.

The federal court's injunction barring state court action was swiftly vacated upon appeal to this Court. A-166 (Cotlow v. Emison, 112 S. Ct. 855 (Jan. 10, 1992) (mem.)). One of the primary grounds raised by appellants in that appeal was the doctrine set forth in Germano. It is apparent that the federal court misunderstood the nature and significance of this Court's summary vacation of the injunction. In its February 19, 1992, order, the federal court stated:

> When the Supreme Court dissolved the injunction, the purpose of the injunction had been fulfilled. An appellate court does not work in a vacuum without a record or briefs from both sides. To urge that the Supreme Court intended to decide the complex federalism issues we now address without a plenary record and hearing demeans the appellate process.

A-24 to A-25 n.26.[11]

Even after the state court entered its final judgment confirming its December 9, 1991, plan, the federal court refused to abstain. The federal court instead adopted its own legislative and congressional redistricting plans and enjoined Minnesota's election

[11]Despite the federal court's observation, it is clear that a summary reversal order is appropriate for "situations in which the law is well-settled and stable, the facts are not in dispute, and the decision below is clearly in error." Schweiker v. Hansen, 450 U.S. 785, 790 (1981) (Marshall, J., dissenting). See generally Robert L. Stern, et al., Supreme Court Practice ¶ 5.12 (6th ed. 1986).

officials from conducting elections under the state court's plan. A-71 to A-72.[12] The federal court's continued refusal in this action to defer to the parallel state court proceeding has therefore required a second appeal.

The federal court's February 19, 1992, order purports to heed this Court's pronouncements in Germano, but in reality violates both the letter and the spirit of that decision. The federal court offers two grounds for ignoring the state court's judgment: the existence of unspecified "independent" federal issues and the court's belief that the state judicial process would require undue delay. A-25. Neither reason supports the federal court's attempt to overrun the state's judicial process.

The federal court refers to only one issue allegedly not present in the state court proceedings: a Voting Rights Act challenge. In neither the federal action nor the state action, however, did any party allege that Chapter 246 violated the Voting Rights Act. See A-241; A-73; SA-63. Moreover, the state court had directed the parties to address any allegations they might have that Chapter 246 or the state court plan violated the Voting Rights Act. A-226. None were asserted by any party. A-256. After undertaking its own analysis, the state court expressly determined

[12]The federal court permanently enjoined the State of Minnesota from conducting elections under any plan other than the federal court's order or a plan enacted by the Legislature. The wording of the injunction appears designed to prevent the state court from issuing redistricting plans ever again. See R-129 (Emison plaintiffs urged federal court to adopt legislative plan despite state court order for judgment based on federal court's "continuing jurisdiction" from 1982 redistricting action); cf. A-443 to A-444 (motion brought to dismiss state court action based on federal court's "continuing jurisdiction" from 1982 redistricting action).

that Chapter 246 met the standards of the Voting Rights Act. A-244; A-259.[13] No party has appealed that determination.

The federal court's presumption that the state court could not redistrict in a timely fashion is also wrong. The state court's legislative redistricting plan was published on December 9, 1991, its judgment was entered on January 30, 1992, and the judgment became unappealable on April 29, 1992.[14] The state court was also prepared to adopt a congressional redistricting plan as early as March 3, 1992. A-446.[15] Moreover, judgment on both plans would have been entered much sooner but for the federal court's December 5, 1991, injunction. Having itself prevented the state court action from proceeding, the federal court could not rely on

[13]To the extent that the federal court believed that it had exclusive jurisdiction over the Voting Rights Act, the court was incorrect. See Hathorn v. Lovorn, 457 U.S. 255, 269 (1982); Members of the California Democratic Congressional Delegation v. Eu, Court File No. C-91-3383 slip op. at 15 (N.D. Cal. March 3, 1992); see also Gulf Offshore Co. v. Mobil Oil Corp., 453 U.S. 473, 477-78 (1981) (concurrent state court jurisdiction presumed absent congressional provision to the contrary or disabling incompatibility). In adopting a redistricting plan, a court necessarily must ensure that it meets the requirements of the Voting Rights Act. Fletcher v. Golder, 959 F.2d 106, 110 (8th Cir. 1992).

[14]A ninety day appeal period applied to the state court's judgment. Minn. R. Civ. App. P. 104.01.

[15]It is undisputed that the drawing of congressional districts is a state responsibility. The United States Constitution gives responsibility for drawing congressional district boundaries to state legislatures. U.S. Const. art. I, § 4. When a state legislature fails to adopt a congressional redistricting plan, state courts are urged, under the doctrine established in Scott v. Germano, to adopt a plan. Numerous state courts have met this responsibility, California being the most recent example. E.g., Wilson v. Eu, 823 P.2d 545 (Cal. 1992); Assembly v. Deukmejian, 639 P.2d 939 (Cal.), cert. denied and app. dismissed sub nom. Republican Nat'l Comm. v. Burton, 456 U.S. 941 (1982); Legislature of Cal. v. Reinecke, 492 P.2d 385 (Cal. 1972); Koziol v. Burkhardt, 241 A.2d 451 (N.J. 1968); People ex rel. Scott v. Kerner, 211 N.E.2d 736 (Ill. 1965).

the resulting delay to preempt the primary and rightful role of the state court.

If a federal district court at any time can adopt its own redistricting plan while a state court is proceeding diligently to resolve the issues presented, or has already resolved those issues, there is really no reason for the state court ever to become involved in redistricting cases. Affirmance of the federal court judgment in this case would invite continued litigation of redistricting issues that have already been decided in the state courts. If partisan interests are not satisfied in a state court proceeding, litigants would be fully able to raise those interests anew in a separate federal court proceeding. Furthermore, affirmation of the federal court judgment would remove from state court consideration the vital issues of state policy raised in redistricting cases. In addition, as this case dramatically demonstrates, the simultaneous litigation of parallel state and federal redistricting actions can result in wasteful proceedings, unnecessary appeals, conflicting judgments, voter and candidate confusion, diminished respect for the judiciary, and serious harm to our federal system of justice.[16] Concepts of federalism are rendered meaningless if a federal court can simply ignore state court redistricting efforts merely because it wants, for whatever reason, to assume the task itself.

[16]The wastefulness of the duplicative federal proceedings is underscored by the extraordinary costs incurred in the federal proceeding by the State of Minnesota. For example, the cost of the special masters alone in the federal action was $158,745.71, R-155; R-158; R-159, while the total cost expended by the state panel was $28,786.54, ABA-6 to ABA-7. These costs have been charged to and paid by the State of Minnesota. JA-40. Furthermore, attorneys for the Emison and Benson plaintiffs have moved to seek more than $279,000 from the State of Minnesota for their attorney fees and costs in the federal action as of March 20, 1992. R-148 to R-153.

Germano clearly dictates state court primacy in this action. This Court is urged to state unequivocally to the court below, and to other federal district courts faced with parallel state court redistricting proceedings,[17] that state courts must be allowed a reasonable opportunity to resolve the redistricting issues before them. Only when it is clear that a state court has failed to meet its redistricting responsibilities should a federal court proceed to resolve the parallel redistricting claims before it. Under no circumstances can the State of Minnesota be said to have failed to meet its redistricting responsibilities. The federal court judgment should be vacated in its entirety.

II. THE STATE COURT'S JUDGMENT BARRED THE FEDERAL COURT FROM ADOPTING A LEGISLATIVE REDISTRICTING PLAN.

The federal court's judgment adopting a legislative redistricting plan and enjoining Minnesota election officials from conducting legislative elections under any other plan is incompatible with the judgment entered by the state court on January 30, 1992, which requires Minnesota election officials to conduct its 1992 elections under the state court's plan. When rendering its judgment, the federal court was aware of the pre-existing state court judgment but chose to ignore it. A-23 to

[17]Parallel state and federal actions are currently pending in Florida, New York, Ohio, Pennsylvania (congressional), and Texas. Parallel state and federal actions have been resolved in California, Illinois, and Pennsylvania (legislative). See, e.g., Table 5, A-391 to A-392; Members of Cal. Democratic Congressional Delegation v. Eu, Court File No. C-91-3383 (N.D. Cal. March 3, 1992); Illinois Redistricting Comm'n v. LaPaille, 1992 U.S. Dist. LEXIS 2930 (N.D. Ill. March 11, 1992). These cases involve the redistricting of state legislatures and congressional seats. Hundreds, if not thousands, of additional redistricting actions can be anticipated in the next few years as districts for county, municipal, school board, and other offices are redrawn.

A-24; see also R-114; R-121; R-124; R-126 (parties urged federal court to defer to state court order for judgment after federal court order of stay vacated).

The federal court's subsequent judgment adopting a legislative redistricting plan violates fundamental principles of federalism. The federal court judgment violates the Full Faith and Credit Act, 28 U.S.C. § 1738, and contravenes the principles of collateral estoppel. In addition, the judgment constitutes an advisory opinion as the claims before the federal court relating to legislative redistricting became moot once the state court judgment was entered. Each of these grounds requires that the federal court judgment creating a legislative redistricting plan be vacated.

A. The Federal Court's Order Violated the Full Faith and Credit Act.

By adopting its own legislative redistricting plan despite the existence of a prior and valid state court judgment establishing a constitutionally valid redistricting plan, the federal court violated the Full Faith and Credit Act, 28 U.S.C. § 1738. The Act provides, in part:

> The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.
>
> Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and

> its Territories and Possessions as they have by law or usage in the courts of such State, Territory, or Possession from which they are taken.

Under this statute, the federal court was obligated to give the state court judgment the same effect it would have in the Minnesota courts. Parsons Steel, Inc. v. First Ala. Bank, 474 U.S. 518, 525 (1986); see also Charles Koen & Assocs. v. City of Cairo, 909 F.2d 992, 996-97 (7th Cir. 1990). Under Minnesota law, the judgment remained final unless and until reversed. Simonds v. Norwich Union Indem. Co., 73 F.2d 412, 416 (8th Cir. 1934), cert. denied, 294 U.S. 711 (1935); State ex rel. Spratt v. Spratt, 184 N.W. 31, 32 (Minn. 1921). The federal court was required to respect the judgment, absent reversal of the judgment on appeal. It did not do so.

The Full Faith and Credit Act was enacted to prevent federal courts from undermining the power and integrity of state courts and to avoid the imposition of conflicting judgments. The federal court's action betrayed these important goals. Minnesota's election officials, candidates, and citizens have been subjected to conflicting orders by the federal and state courts. The state court's order was never appealed and is no longer subject to reversal. The discord between the courts' judgments can therefore be resolved only if this Court vacates the federal court's legislative redistricting plan.

B. The Federal Court's Order Contravenes the Principles of Collateral Estoppel.

The federal court's order should also be reversed because the parties to the federal action were collaterally estopped from pursuing the same issues which were necessarily resolved by the state court's December 9, 1992, order. The state court unanimously held that Chapter 246 complies with the Voting

Rights Act and unanimously adopted a legislative redistricting plan based on Chapter 246. A-258 to A-259. The state court order resolved all claims that Chapter 246 violated the Minnesota and United States Constitutions. The state court's holding was final, subject only to review by the Minnesota appellate courts and, ultimately, by this Court. Apparently not satisfied with the result, the Benson plaintiffs continued to litigate their constitutional challenges to Chapter 246 in the federal action.[18] The federal court erred in relitigating these issues.

This Court and lower federal courts generally have accorded preclusive effect to issues of law and fact decided by state courts. In Allen v. McCurry, 449 U.S. 90, 94 (1980) this Court stated:

> Under collateral estoppel, once a court has decided an issue of fact or law necessary to its judgment, that decision may preclude relitigation of the issue in a suit on a different cause of action involving a party to the first case.

The doctrine reduces unnecessary litigation, fosters reliance on adjudication, and "promote[s] the comity between state and federal courts that has been recognized as a bulwark of the federal system." Id. at 95-96.

Under Minnesota law, collateral estoppel precludes the relitigation of all issues already litigated in a prior action. Gollner v. Cram, 102 N.W.2d 521, 523 (Minn. 1960). The Minnesota Supreme Court has articulated four factors which must be established in order to invoke the doctrine of collateral estoppel. The doctrine precludes relitigation of an issue if: 1) the issue is

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[18] The Emison plaintiffs' claims regarding legislative redistricting related to the 1982 legislative districts and became moot when the statute establishing those districts was repealed by Chapter 246. See, e.g., Kremens v. Bartley, 431 U.S. 119, 128-29 (1977) (case rendered moot when relevant statute repealed).

identical to an issue in a prior action; 2) final judgment was entered in the prior action on the merits; 3) the estopped party was a party or in privity with a party in the prior action; and 4) the estopped party was given a full and fair opportunity to be heard on the adjudicated issue. Ellis v. Minneapolis Comm'n on Civil Rights, 319 N.W.2d 702, 704 (Minn. 1982). All four factors support the application of collateral estoppel in this action to preclude relitigation of the Benson plaintiffs' claims.

First, the issues raised in the federal action were resolved by the state court. The Benson plaintiffs challenged the constitutionality of Chapter 246 based on the technical errors contained in its written boundary descriptions. SA-63. Chapter 246 was similarly challenged in the state court action. ABA-26 to ABA-27. The state court meticulously reviewed Chapter 246 and adopted a plan which cured the alleged defects. See A-259. Although no allegation of a Voting Rights Act violation was made against Chapter 246 in either the federal or the state court action, the state court thoroughly reviewed and resolved this issue as well. A-259.

Second, the state court entered its final judgment on the merits on January 30, 1992. A-355. No appeal was taken from the judgment and the time for appeal has now expired.

Third, the plaintiffs in the federal court cases and the intervening plaintiffs in the state court case all represent the same interests. All of these parties brought their claims on behalf of all citizens and voters of Minnesota who subscribe to the views of the Minnesota Independent Republican Party. A-74; SA-64; ABA-23 to ABA-24. They are in privity with each other. Montana v. United States, 440 U.S. 147, 154-55 (1979). In any event, the state court action was pleaded as a class action on behalf of the

citizens of Minnesota; the state-court result was dispositive as to all parties in all of the actions.

Fourth, all parties were given a full and fair opportunity to be heard in state court. The state court requested the parties to address all alleged defects in Chapter 246 as well as any Voting Rights Act issues and held hearings regarding these issues. See A-226; A-228; A-229 to A-232; A-248.

Appellees' claims relating to legislative redistricting were finally resolved by the state court on January 30, 1992. The doctrine of collateral estoppel bars them from seeking contradictory relief in this action, and the federal court's judgment relating to legislative redistricting should, therefore, be vacated.

C. The Federal Court's Order Was an Advisory Opinion as the Claims Regarding Legislative Redistricting in the Federal Action Were Moot.

The federal court's ruling regarding legislative redistricting should also be dismissed on grounds of mootness. An action must be dismissed when the facts change in a way that renders the controversy moot. See generally Erwin Chemerinsky, Federal Jurisdiction § 2.5, at 109-10 (1989). Once a controversy is resolved, a court loses jurisdiction to decide the matter and its ruling on the merits of the resolved action constitutes an advisory opinion. U.S. Const. art. III, § 2; United States Parole Comm'n v. Geraghty, 445 U.S. 388, 395-96 (1980).

The claims raised in the federal action regarding legislative redistricting became moot once the state court entered its judgment adopting a legislative redistricting plan. The federal court's legislative redistricting plan did not resolve any pending claims and constituted an advisory opinion. The federal court's judgment should therefore be vacated. See, e.g., United States Dep't of

Treasury v. Galioto, 477 U.S. 556, 559-60 (1986) (amendment of statute rendered action moot); Kremens v. Bartley, 431 U.S. 119, 128-29 (1977).

The first of the two federal cases to be filed, Emison v. Growe, alleged that the 1982 legislative districts violated the United States Constitution and Section 2 of the Voting Rights Act. These claims became moot when the 1982 legislative redistricting plan was repealed by Chapter 246. Act of May 29, 1991, ch. 246, § 69, 1991 Minn. Laws 781. There could thus be no reasonable expectation that the 1982 districts would be applicable to anyone. At that point all Emison claims regarding legislative redistricting became moot. Weinstein v. Bradford, 423 U.S. 147, 149 (1975); Sosna v. Iowa, 419 U.S. 393, 402 (1975).

Plaintiffs in the second federal case, Benson v. Growe, contended only that the constitutional rights of Minnesota voters would be violated if elections were held pursuant to Chapter 246. Once the state court ordered that legislative elections be conducted under its plan rather than Chapter 246, there was no longer any reasonable expectation that Chapter 246 as enacted would be applicable to anyone. The Benson claims therefore became moot as well. See County of Los Angeles v. Davis, 440 U.S. 625, 631 (1979); Sosna, 419 U.S. at 402.

Even if the Emison or Benson claims regarding legislative redistricting somehow remained viable while pending before the federal court, they became moot once the time for appeal of the state court judgment expired. See United States v. Munsingwear, Inc., 340 U.S. 36, 39 (1950) ("The established practice of the Court in dealing with a civil case from a court in the federal system which has become moot while on its way here or pending our decision on the merits is to reverse or vacate the judgment below and remand with a direction to dismiss."). The federal actions, as

they relate to legislative redistricting, should therefore be dismissed as moot, and the February 19, 1992, judgment adopting a legislative redistricting plan should be vacated.

III. THE FEDERAL COURT'S FINDING OF A VOTING RIGHTS ACT VIOLATION IS ERRONEOUS AND CONTRARY TO LAW.

The pretext on which the federal court based its adoption of a legislative redistricting plan was Section 2 of the Voting Rights Act, 42 U.S.C. § 1973. No party ever alleged that Chapter 246 violated the Voting Rights Act; no evidence of a Voting Rights Act violation was submitted; and the federal court entered its judgment without briefs or a hearing on the issue. Moreover, the issue had previously been resolved by the state court which requested briefs, A-226, addressed the issue at two hearings, A-219; A-228, and held that Chapter 246 met the requirements of the Voting Rights Act, A-259.

The federal court proceeded sua sponte and found that something, which it never identified, violated Section 2 of the Voting Rights Act. A-37 to A-38. It then artfully found that neither Chapter 246 nor the state court's plan remedied the Voting Rights Act violation which it had detected. A-38 to A-39.[19] The federal court deemed that a "super-majority minority" senate district was required to satisfy the requirements of the Voting

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[19]As the Fifth Circuit Court of Appeals noted in Overton v. City of Austin, this approach "puts the cart before the horse." 871 F.2d 529, 543 (5th Cir. 1989) (per curiam). A court must find vote dilution in the existing district before turning to the question of what remedy should apply.

Rights Act in Minnesota. A-39.[20]

The federal court's finding that Chapter 246 failed to satisfy the Voting Rights Act is devoid of support either in law or fact. The federal court chose not to apply the three-part test which this Court established in Thornburg v. Gingles, 478 U.S. 30, 48 (1986). A prima facie showing that Chapter 246 violated the Voting Rights Act could not have been made under that test. In addition, the one-sided record created by the federal court, without the opportunity for rebuttal evidence to be submitted, is wholly insufficient to support a finding that Chapter 246 violated the Voting Rights Act under the "totality of the circumstances" test which the federal court applied.

A. No Prima Facie Showing Could Be Made That Chapter 246 Violates Section 2 of the Voting Rights Act.

Section 2 of the Voting Rights Act prohibits a state from using any standard, practice, or procedure in a manner which results in a denial of the right to vote on account of race or color.[21] The Voting Rights Act does not, however, require that

[20]The federal court's plan, however, did not create a senate district in which members of any minority group, or even of all minority groups combined, constitute a majority of the voting age population in the district. See Table 2, A-381.

[21]Section 2(a) of the Voting Rights Act, 42 U.S.C. § 1973(a), states:

> No voting qualification or prerequisite to voting or standard, practice or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in Section 1973b(f)(2) of this title [relating to language minorities], as provided in subsection (b) of this section.

districts be drawn to maximize the opportunity of minority voters to elect representatives of their choice. See Gingles, 478 U.S. at 94 (O'Connor, J., concurring) (in enacting Section 2, Congress did not intend to provide minority voters with "maximum feasible minority voting strength").

The federal court erred in interpreting the Voting Rights Act as requiring the creation of a super-majority minority district. Requiring the maximization of minority voting strength is tantamount to requiring proportional representation. Section 2 specifically provides that "nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population." 42 U.S.C. § 1973(b). Rather, Section 2 prohibits a state from creating districts which dilute the ability of minority group members to elect representatives of their choice. Gingles, 478 U.S. at 46-47.

To prevail, a party challenging a redistricting plan under Section 2 of the Voting Rights Act must prove that the implementation of the plan will operate, or has operated, to minimize or cancel out the ability of minority voters to elect their preferred candidates. Gingles, 478 U.S. at 48. In Gingles, this Court identified three circumstances which must exist for a violation of Section 2 of the Voting Rights Act to be found in a redistricting action. First, the minority group must be shown to be sufficiently large and geographically compact to constitute a majority of the voters in a single-member district.[22] Second, the

[22]The Court in Gingles implied, but did not specifically state, that minority group members must be able to constitute a majority of the voting age population in a district to satisfy this precondition. Gingles, 478 U.S. at 50 n.17. Courts have uniformly construed Gingles in this way. E.g., Romero v. City of Pomona, 883 F.2d 1418, 1426 (9th Cir. 1989), overruled on unrelated grounds, Townsend v. Holman Consulting Corp., 914 F.2d 1136, 1141 (9th Cir. 1990); McNeil v. Springfield Park Dist., 851 F.2d 937, 942 (7th Cir. 1988), cert. denied, 490 U.S. 1031 (1989).

minority group must be shown to be politically cohesive. Third, the party challenging the plan or structure must demonstrate that, absent special circumstances, bloc voting by the white majority in the challenged district usually defeats the minority's preferred candidate. Id. at 50-51. Unless all three of these preconditions are met, it can not be held that a districting plan or structure dilutes minority voting power in violation of Section 2 of the Voting Rights Act.[23]

Gingles involved a challenge to a redistricting plan which created multimember districts, but the threshold test it sets forth applies as well to challenges to redistricting plans which create single-member districts. See Gingles, 478 U.S. at 50 n.17; see also Jeffers v. Clinton, 730 F. Supp. 196, 205 (E.D. Ark. 1989), aff'd, 111 S. Ct. 662 (1991); McDaniels v. Mehfoud, 702 F. Supp. 588, 591 (E.D. Va. 1988), appeal dismissed, 927 F.2d 596 (4th Cir. 1991). As Judge MacLaughlin noted in his dissent in this action, in the absence of any principled basis for distinguishing between challenges to multimember districting schemes and challenges to single-member districting schemes, courts have concluded that the Gingles test applies to both types of voting rights challenges. See A-63 to A-64.[24]

[23]The threshold test established in Gingles serves as an effective screen against meritless Voting Rights Act claims. Such a bright-line test is necessary for the hundreds of state, municipal, and other redistricting actions which follow each census.

[24]It would be nonsensical to apply the Gingles preconditions to multimember districts and not to single-member districts. For instance, if Chapter 246 had combined senate districts 58, 60, and 61 into a multimember senate district, the Gingles test would apply. Chapter 246 should not be held to a higher standard under the Voting Rights Act because it created single-member districts, a device which enhances the opportunity for minorities to elect representatives of their choice. See Wise v. Lipscomb, 437 U.S. 535, 540-41 (1978) (absent special

The federal court chose not to apply the three-part Gingles test in this action. A-28 to A-30. Chapter 246 can not be held to violate Section 2 of the Voting Rights Act if that test is applied. The federal court's failure in this case even to attempt to satisfy the Gingles requirements appears to be less a result of any principled distinction between single-member districts and multimember districts than a result dictated by the impossibility of finding a Voting Rights Act violation in this case under the test.

With respect to the first Gingles precondition, it is not possible to draw a geographically compact House or Senate district in Minnesota in which members of a single minority group would constitute a majority of the voting age population of the district. In drafting Chapter 246, both the House and Senate authors started by looking for areas in which members of a racial or language minority group were "sufficiently large and geographically compact to constitute a majority in a single-member district." Gingles, 478 U.S. at 50. They found none.[25] Even by lumping minority groups together within a district, the authors of the redistricting plan were able to create only three House districts in which combined groups of minority members constituted a majority of

circumstances, federal courts must use single-member districts rather than multimember districts when imposing redistricting plans).

[25]Specifically, the House and Senate authors of Chapter 246 found that the highest concentration of African-Americans in Minnesota was north of downtown Minneapolis (47 percent of a House district), the highest concentration of Native Americans was in northwestern Minnesota (21 percent of a House district), the highest concentration of Asians and Pacific Islanders was north and west of downtown St. Paul (14 percent of a House district), and the highest concentration of Hispanics was south of downtown St. Paul (13 percent of a House district). When voting age populations were measured for each of these groups, these percentages were even lower.

the total population. See Table 1, A-380. These districts were enacted in Chapter 246 and included in the state court plan.

The second precondition of Gingles has likewise not been shown to exist in Minnesota. As other courts have recognized, it is difficult to demonstrate political cohesiveness within a single minority group, much less among members of different minority groups. See, e.g., Romero, 883 F.2d at 1426 (Blacks and Hispanics found not to be politically cohesive). The record in this action is devoid of any evidence that the members of a single minority group are politically cohesive. A-30 n.30. More importantly, there are no facts to support a finding that members of all minority groups within Minnesota combined are politically cohesive.

Finally, the third Gingles precondition has not been shown to exist. There is no allegation, much less any evidence, that non-minority voters vote as a bloc against candidates supported by minority voters. A-30 n.30.[26] Appellants submit that no such

[26]To the contrary, a comparison of the Official Directory of the Minnesota Legislature from 1969 to 1991 and the census counts of 1980 and 1990 shows that several "people of color" have been elected to the Minnesota Legislature from districts having a white majority voting population. Cf. Overton, 871 F.2d at 544 n.61 (majority support for minority candidates defeated showing of racially polarized voting). In 1972 and 1976, a African-American was elected to the Minnesota Senate from a white suburb of Minneapolis. In 1976, 1980, and 1982, an Hispanic was elected to the Minnesota Senate from a suburb of St. Paul where Hispanics were a minority of the population. In 1968, 1970, 1972, and 1974, a Native American was elected to the Minnesota House from a district in which Native Americans are a minority of the population. In 1972, 1974, 1976, and 1978, an African-American was elected to the Minnesota House from a white suburb of Minneapolis. In 1979, an Hispanic was elected to the Minnesota House from a district in St. Paul in which Hispanics were a minority of the population.

Under the 1982 legislative redistricting plan, the election of minority representatives from districts which do not have a majority minority population continued. In 1980, 1982, and 1984, an African-American was elected to the Minnesota House from a district in Minneapolis having a total African-American

showing could be made.

The burden is on parties challenging a redistricting plan to show that all three of the Gingles requirements exist. No party to this action has alleged a Voting Rights Act violation with regard to Chapter 246 and no attempt was made to show that the Gingles requirements were satisfied. The federal court, acting sua sponte in search of a Voting Rights Act violation, also failed to make any such showing and, indeed, failed even to apply the Gingles requirements. Accordingly, the federal court's finding of a Voting Rights Act violation should be reversed as both clearly erroneous and contrary to law. See Romero, 883 F.2d at 1427 n.16; McNeil, 851 F.2d at 942.

B. The Record Does Not Support the Federal Court's Finding of a Voting Rights Act Violation.

Even were the Gingles test satisfied or not applicable here, the federal court's finding of a voting rights violation is without any factual support.[27] In addition to meeting the three preconditions set forth in Gingles, a party challenging a redistricting plan under Section 2 of the Voting Rights Act must

population of only 36 percent. In 1986, 1988, and 1990, another African-American was elected from the same district. In 1990, an American Indian was elected to the Minnesota Senate from a district in which the Native American population was 7 percent; an Hispanic was elected to the Minnesota House from a suburb of Minneapolis where Hispanics were less than 1 percent of the population; and an Hispanic was elected to the Minnesota House from a district in St. Paul having an Hispanic population of only 13 percent.

[27]As Judge MacLaughlin noted in his dissent, the majority reached its conclusions on the voting rights issues without the benefit of briefing or oral argument on the voting rights violations it purports to find. A-62 n.3. No evidentiary hearings were held on the voting rights issue and appellants were afforded no opportunity to address the "evidence" on which the federal court's finding of a voting rights violation turns.

further demonstrate that "as a result of the challenged practice or structure plaintiffs do not have an equal opportunity to participate in the political processes and to elect candidates of their choice." Gingles, 478 U.S. at 44 (quoting S. Rep. No. 97-417, 28 (1982)); see also Jeffers v. Clinton, 730 F. Supp. 196, 205 (E.D. Ark. 1989), aff'd, 111 S. Ct. 662 (1991).

The Court noted in Gingles that a number of factors may be relied upon in showing a diminution of minority political opportunity. It identified, however, certain overriding limits to the means by which Section 2 violations may be proved:

> First, electoral devices . . . may not be considered per se violative of § 2. Plaintiffs must demonstrate that, under the totality of the circumstances, the devices result in unequal access to the electoral process. Second, the conjunction of an allegedly dilutive electoral mechanism and the lack of proportional representation alone does not establish a violation. Third, the results test [set forth in Section 2 and its legislative history] does not assume the existence of racial bloc voting; plaintiffs must prove it.

Gingles, 478 U.S. at 46 (citations omitted). In finding a Voting Rights Act violation, the federal court majority disregarded each of these three basic principles of voting rights jurisprudence. A-64 to A-67.

The federal court overstepped the first of these limits by, in effect, finding a per se violation of the Voting Rights Act based on the fact that Chapter 246 did not create a super-majority minority senate district in Minneapolis. See A-38 to A-39; A-65. Indeed, as Judge MacLaughlin noted in his dissent, "The majority's holding is, in effect, a conclusion that a redistricting plan that does not contain a super-majority minority senate district in Minneapolis

is an electoral device that is per se violative of Section 2." A-65.[28] Whatever the merits of creating a super-majority minority senate district may be, the absence of such a district may not be considered a per se violation of Section 2. See Quilter v. Voinovich, Court File No. 5:91-CV-2219 slip op. at 13 (N.D. Ohio March 19, 1992) ("Defendants have not and cannot cite to a single case, involving violations of § 2 of the Voting Rights Act, that stands for, or even lends support to, its proposition that federal law, in the absence of a proven § 2 violation, requires per se creation of majority-minority districts wherever possible.").[29]

The federal court violated the second limiting principle articulated in Gingles by relying heavily on the lack of proportional representation in Minneapolis in finding a violation of Section 2. A-33 to A-34. This alleged lack of proportionality does not constitute a violation of Section 2 of the Voting Rights Act. Section 2 specifically cautions against resting findings of Voting Rights Act violations on the lack of proportional representation. 42 U.S.C. § 1973(b). Rather, the Voting Rights Act seeks only to secure for minorities the same opportunity as other segments of the electorate to "participate in the political process and to elect representatives of their choice." Id. (emphasis added). The federal court's assumption that minority voters would always choose minority representatives is both improper and

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[28] In fact, the federal court's plan does not contain a senate district in which a majority of the voters are members of a minority group. Table 3-2, A-383 to A-384.

[29] The National Association for the Advancement of Colored People unanimously endorsed Chapter 246, with corrections, over a plan which created a senate district of the sort adopted by the federal court. See A-366; A-368.

unwarranted.[30]

The federal court ignored the third limiting principle set forth in Gingles by assuming, rather than requiring the plaintiffs to prove, the existence of racial bloc voting. The existence of racial bloc voting is, as Gingles recognizes, "a key element of a vote dilution claim." Gingles, 478 U.S. at 55. The federal court admits that the record contains no statistical data attempting to correlate voting patterns with the race of voters and candidates. A-30 n.30. In lieu of specific statistical data, the federal court accepted as probative of the existence of racial bloc voting a sweeping generalization contained in a law review article that racial bloc voting is "all but inevitable in the vast majority of cases." A-30 n.30. As Judge MacLaughlin notes, "The majority's assumption that racial bloc voting is 'all but inevitable' in this case . . . is precisely the assumption that the Supreme Court and the legislative history accompanying Section 2 forbid. The broad, generalized statements of commentators cannot substitute for evidence of racially polarized voting." A-67.

Notwithstanding the federal court's misinterpretation and misapplication of the relevant law regarding Section 2 of the Voting Rights Act, even on its own terms the federal court has not demonstrated that "under the totality of the circumstances," the absence of a super-majority minority district has resulted in unequal access to the electoral process for minorities.

The federal court relied on various pieces of questionable "evidence" in finding that a Voting Rights Act violation existed which Chapter 246 failed to remedy. A-33 to A-37. It is

[30]It would likewise be inappropriate and incorrect to assume that non-minority voters in Minnesota would always elect non-minority representatives. See supra note 26.

inconceivable that any conclusion about minority access to the electoral process could reasonably be drawn today from a provision of the Minnesota Constitution restricting voting rights to white people which was repealed more than a century ago. Similarly, judicial findings in a school desegregation case from the 1970s can not be presumed to reflect accurately the educational status of a minority population nearly twenty years after the implementation of court-ordered desegregation, let alone be deemed authoritative in predicting how the educational status of minorities in Minnesota has influenced their access to the electoral process.[31] The newspaper article reflecting performance gaps between minority and majority students in Minneapolis which the federal court cited is telling; the court's reliance on this irrelevant hearsay highlights the absence of any true evidence of a Voting Rights Act violation in the record. See also A-65.

The federal court also based its finding of a Voting Rights Act violation on the fact that the number of minority legislators

[31]Were the school desegregation case relevant, it would support a finding of no discrimination in Minneapolis. The case was dismissed in 1983 when the federal district court concluded that the School Board would maintain desegregated schools on its own accord:

> The Court is now convinced that the majority, if not all, of the School Board and the Superintendent and his staff will support the constitutional rights of the students and will respect the rights of all of our citizens, including students, to the equal protection of the law as required by the Constitution.
>
> The Court believes and finds that the District should have the opportunity for autonomous compliance with constitutional standards, that the State Department of Education should and will monitor the implementation of the long range plan which includes integration/desegregation and that the North-Edison exchange program satisfies constitutional standards.

ABA-66.

from Minneapolis is not proportional to the percentage of minorities living in Minneapolis. As discussed previously in this brief, the federal court's inference that because the number of minority legislators from the City of Minneapolis is not proportional to the City's minority population, minority voters must necessarily have been denied an equal opportunity to elect the "representatives of their choice" is unwarranted. A piece of evidence essential to that conclusion, namely that minority voters, if given the opportunity to do so, would always choose a minority candidate over a non-minority candidate, is completely lacking in this case. In addition to being logically faulty, the federal court's conclusion violates the second principle of voting rights jurisprudence set forth in Gingles. See A-66.

Finally, the federal court relied heavily on its finding that Chapter 246 did not pit incumbent Minneapolis state senators against each other. Absent evidence that the incumbent representatives have failed to represent minority interests, this finding does not show that minority voters have been denied an equal opportunity to elect representatives of their choice. In any event, the evidence shows that, in creating the best minority districts possible, the authors of Chapter 246 did pair incumbent representatives. Incumbents were paired in one of the three minority-opportunity House districts in Minneapolis.[32] In a second of the minority-opportunity House districts in Minneapolis, House District 58B, the incumbent is an African-American and pairing of this incumbent would not seem to favor minority voters.

Rather than being based on incumbent protection, the evidence shows that Chapter 246 was drafted to create the best

[32]Chapter 246 paired two Democratic-Farmer-Labor representatives in House District 61B.

minority-opportunity districts possible. Working together, the House and Senate authors drew districts that maximized the concentrations of minority populations, held hearings on these minority district "footprints," and sought advice from minority group leaders and minority group members who had been elected to public office. See A-393 to A-409; A-412 to A-420; A-436 to A-439.[33] These "footprints" were the starting point for the rest of the plan which became Chapter 246. See A-408 to A-409; A-418 to A-419. The quality of the work done by the Legislature in creating Chapter 246 is reflected by the unanimous endorsement which the National Association for the Advancement of Colored People gave to Chapter 246 with its technical corrections. A-366; A-368. The minority-opportunity districts created in Chapter 246 were not substantively altered by the state court in its plan.

The Legislature, through its open and extensive efforts to work with the minority communities, was in a much better position than the federal court, which reached its conclusions on no evidentiary record, to determine which districts would best enhance the effectiveness of minority voters.

The issue created by the federal court in this action is not, however, which plan creates the best minority-opportunity districts. The issue is whether the Legislature, which is charged with the responsibility and discretion for crafting legislative districts, adopted a plan which has been proven to violate Section 2 of the Voting Rights Act. As Judge MacLaughlin pointed out in dissent:

[33]The authors sought advice from, among others, the St. Paul Urban League, the Urban Coalition of Minneapolis, the Minnesota Indian Affairs Council, the Spanish-Speaking Affairs Council, the Council on Black Minnesotans, the Minnesota Council on Asian-Pacific Affairs, and the National Association for the Advancement of Colored People as well as from minority group members in the Legislature and the city council presidents of Minneapolis and St. Paul, both of whom are African-American. See id.

> [N]o party to this suit has alleged, much less proved, that Chapter 246 violates section 2 of the Voting Rights Act; rather, plaintiffs have asserted only that their proposed plan "better" preserves the political power of minorities. There is no requirement, however, that a lawfully enacted reapportionment plan that complies with the Voting Rights Act be set aside in favor of an allegedly "better" plan.

A-63.

The right of every citizen of the United States to vote and to have equal access to the political process is a right of extraordinary dimension in our democracy. Section 2 of the Voting Rights Act is an effective enforcement tool which has helped transform significantly the political power of minority citizens. However, in this case, despite a violation having not been alleged, briefed, argued, or evidenced in any way by the parties, section 2 of the Voting Rights Act was used by the federal court to substitute its policy interests for those of the State of Minnesota acting through the legislature and the judiciary. In so doing, the federal court ignored the test established in Thornburg v. Gingles and relied upon meaningless "evidence" which no party was even permitted to rebut. In fact, no evidence exists which supports a violation of section 2 of the Voting Rights Act. The record contains no evidence to support a conclusion that the lack of a super-majority minority senate district in the past has deprived minorities of equal access to the political process. More importantly, the record contains no evidence to support a conclusion that Chapter 246 or the state court's legislative redistricting plan will lessen the opportunity of minorities to participate in the political process and to elect representatives of their choice in the future.

Under these circumstances, the violation of the Voting Rights Act is merely a pretext to substitute the will of the federal court for the policy choices made by the State of Minnesota. Use of the Voting Rights Act for these purposes trivializes the law's important principles and will ultimately undermine the fundamental right of political access protected by the Act. The federal court's judgment adopting a legislative redistricting plan is clearly erroneous and should therefore be vacated.

IV. THE FEDERAL COURT'S LEGISLATIVE AND CONGRESSIONAL REDISTRICTING PLANS FAILED TO INCORPORATE STATE POLICY TO THE EXTENT POSSIBLE.

For the reasons discussed previously, the federal court erred by not deferring to the state court action and judgment and in finding a Voting Rights Act violation. Even were the federal court somehow justified in the course it took, however, the judgment it entered should be reversed because its legislative and congressional redistricting plans fail to adhere to discernible Minnesota redistricting policy.

A. The Federal Court's Legislative Redistricting Plan Was Not Based on Chapter 246.

Even assuming the federal court correctly determined that a portion of the state court redistricting plan violates the Voting Rights Act, the federal court erred in redistricting the entire state from scratch rather than basing its plan on Chapter 246. See A-68. A court which draws a redistricting plan must follow discernible state policy to the fullest extent possible. Upham v. Seamon, 456 U.S. 37 (1982) (per curiam); White v. Weiser, 412 U.S. 783 (1973). If a federal or state court finds that a redistricting law violates constitutional or statutory requirements, the court must

adopt a plan which cures the violations but incorporates as much of the law as is possible. Upham, 456 U.S. at 43 (Voting Rights Act violations in two districts); Weiser, 412 U.S. at 795 (excessive population deviations throughout entire plan).[34]

The principle behind the doctrine adopted in Weiser and Upham is clear and sound. Redistricting is an inherently political process which is the responsibility of the state. Courts, particularly federal courts, should intrude on this process only to the extent necessary to cure constitutional and statutory violations. Courts should avoid assuming political responsibilities unnecessarily; courts which exceed this limited role harm the status of the judiciary as an independent, nonpartisan branch of government. See Wise v. Lipscomb, 437 U.S. 535, 539-40 (1978).

The federal court in this case chose to ignore Chapter 246 and the doctrine of Weiser and Upham ostensibly due to (1) technical drafting defects in Chapter 246 and (2) the claimed Voting Rights Act violation in one district in the City of Minneapolis. A-52 n.50. Neither of these stated rationales excused the federal court from basing its remedial plan on the policies set forth in Chapter 246, modified only to the extent necessary to cure any constitutional or statutory defects.

In Weiser, a federal court found that a redistricting law had excessive population deviations. Two redistricting plans were proposed which cured the defects. One was based on a defective state statute while the other was totally independent of the state law. The federal district court chose the redistricting plan which

[34]Courts have applied the doctrine established in Weiser and Upham in a variety of cases. E.g., Cook v. Luckett, 735 F.2d 912, 918 (5th Cir. 1984); Buskey v. Oliver, 574 F. Supp. 41, 43 (M.D. Ala. 1983); Farnum v. Burns, 561 F. Supp. 83, 92 (D.R.I. 1983); Rybicki v. State Bd. of Elections, 574 F. Supp. 1082, 1125 n.108 (N.D. Ill. 1982).

was not based on state law. 412 U.S. at 793-94. On appeal, the Court opined: "[A] federal district court, in the context of legislative reapportionment, should follow the policies and preferences of the State, as expressed in statutory and constitutional provisions." Id. at 795. Because the federal court had rejected the plan that was based on state law, the Court concluded that the federal court had erred. Id.

In this case, the Court is presented with a situation which is nearly identical to the facts in Weiser. The Minnesota Legislature enacted Chapter 246, the state's redistricting law. Chapter 246 is the type of expression of state policy this Court contemplated in Weiser.[35] Just as in Weiser, the redistricting law was flawed; Chapter 246 contained a variety of technical defects which required clarification or correction. Also as in Weiser, the federal court was presented with a plan which was based on Chapter 246 but corrected its defects: The legislature's technical corrections bill, Senate File 1596, was presented to the federal court for consideration. SA-120. Rather than base its plan on Chapter 246, however, the federal court created a new plan that is entirely independent of and inconsistent with Chapter 246.

Not only has the federal court ignored state policy as reflected in Chapter 246, it has also ignored state policy as reflected in the state court's legislative redistricting plan. The state court plan, which followed Chapter 246 except where necessary to correct its technical deficiencies, see A-258 to A-259, was also presented to the federal court, see A-39. The state court's modification of Chapter 246 properly recognized the important

[35]The federal court erroneously concluded that state redistricting policy was only found in the state constitution and in a concurrent resolution of the Minnesota Legislature, but not in the state law, Chapter 246. A-43 to A-44; A-52.

state policy decisions that had been embodied in Chapter 246. Given this Court's express encouragement of such state court actions, see Scott v. Germano, 381 U.S. 407, 409 (1965) (per curiam), the federal court was not free to ignore the clear expression of state policy found in the state court redistricting plan. But that is exactly what the federal court did by drawing an entirely new plan and ignoring state policy decisions.

The federal court's finding of a Voting Rights Act violation likewise did not justify its total disregard for Chapter 246 and the state court's plan. The federal court's remedy of adopting a completely different plan is far more drastic than is required to cure the alleged defect of failing to create a super-majority minority senate district in Minneapolis. As the Court stated in Weiser, the remedial powers of an equity court are limited to the task at hand. 412 U.S. at 796; see, e.g., Sixty-seventh Minnesota State Senate v. Beens, 406 U.S. 187, 198 (1972) (federal court may not reduce size of legislature in redistricting action).

In Upham v. Seamon, 456 U.S. 37 (1982) (per curiam), this Court reversed a federal district court order that had reapportioned both valid and invalid districts. In reversing, the Court relied heavily on Weiser and also stated that, in the absence of a constitutional or Voting Rights Act violation, a "district court's modifications of a state plan are limited to those necessary to cure any constitutional or statutory defect." Id. at 43 (emphasis added). See also Whitcomb v. Chavis, 403 U.S. 124, 160-61 (1971).

Here, the federal court was limited by Weiser and Upham to redistricting only those districts that it found to be invalid. If a minority opportunity senate district of the form drawn by the federal court was required, it could have been created easily by adjusting some, but certainly less than all, of the eighteen legislative districts in Minneapolis. Instead, the federal court chose

to redraw the boundaries of all 201 districts in the State of Minnesota.

Because the federal court's legislative redistricting plan is not based on Chapter 246 nor on the state court's legislative redistricting plan, the federal court's judgment should be reversed.

B. The Federal Court's Congressional Redistricting Plan Was Not Based on Senate File 1597.

The federal court was also required to follow state policy in drawing the boundaries of the congressional districts. See Weiser, 412 U.S. at 795. In this case, state congressional redistricting policy is embodied in Senate File 1597, which passed both houses of the state legislature. The federal court ignored the boundaries set forth in that bill.

The federal court concluded that Senate File 1597 was not state policy because Governor Carlson vetoed it. A-53. The federal court relied on Duxbury v. Donovan, 138 N.W.2d 692, 698 (Minn. 1965), for this conclusion, but that case only addresses whether the governor has the power to veto a redistricting bill. Id. ("Our only duty in this situation is to decide whether the power to veto exists with respect to apportionment legislation.").

The congressional redistricting plan adopted by the Minnesota Legislature constitutes state policy, even though it was vetoed. This Court, in Weiser, expressly stated that "state policy", includes "statutory and constitutional provisions or . . . the reapportionment plans proposed by the state legislature." 412 U.S. at 795 (emphasis added). Other courts have likewise recognized that a plan embraced by a state body need not be adopted as law to constitute state policy. See, e.g., Wise v. Lipscomb, 437 U.S. 535, 539-40 (1978); Shayer v. Kirkpatrick, 541 F. Supp. 922, 932 (W.D. Mo.), aff'd sub nom. Schatzle v. Kirkpatrick, 456 U.S. 966

(1982); Donnelly v. Meskill, 345 F. Supp. 962, 964-65 (D. Conn. 1972); cf. Legislature of Cal. v. Reinecke, 492 P.2d 385 (Cal. 1972).

Because the federal court had before it a congressional redistricting plan adopted by the Legislature that met all federal and state constitutional requirements, it was not at liberty to create an entirely new plan of its own design.[36] At a minimum, Weiser requires an attempt to square a court drawn plan with the legislatively drafted plan. The federal court's congressional redistricting plan violates the doctrine established in Weiser and, as a result, the court's judgment should be reversed.

CONCLUSION

The bright line abstention rule in redistricting challenges, set forth twenty-seven years ago in Scott v. Germano, has stood the test of time. The important principles behind the rule--federalism, state sovereignty in election choices, and avoidance of conflicting judgments--remain sound today. The determined actions taken by the federal court in this case, and the significant impact of those actions on the State of Minnesota, alone present to this Court a highly effective argument why Scott v. Germano remains sound as a matter both of law and policy.

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[36]The federal court and appellees do recognize the principle that courts must be guided by state policy in redistricting. The only evidence of state policy which the federal court and appellees find acceptable, however, are the state constitution and the concurrent legislative resolutions establishing criteria for redistricting. These concurrent resolutions, one for congressional redistricting and one for legislative redistricting, were passed by both houses of the legislature but do not constitute state law because they were not enacted as bills and were not signed by the governor. The same deference accorded to these legislative pronouncements should have been accorded to the congressional redistricting plan which was also adopted by both houses of the Minnesota Legislature.

As amply demonstrated by this case, the bright line abstention rule is fraying at the edges as a result of federal courts that disagree with the states' redistricting policy choices. Most egregious is the use of a bulwark intended to protect political access by minority citizens, the Voting Rights Act, as a pretext to impose the will of the federal court on the states. If a federal court is permitted to act sua sponte and in complete disregard of the Gingles test to vacate an enacted and approved state plan, the Voting Rights Act will be undermined and Scott v. Germano will be rendered meaningless.

The Court should reaffirm the bright line abstention rule in Scott v. Germano and the important federalism principle that underlies the rule by (1) reversing the February 19, 1992, order of the federal district court, (2) vacating the judgment in its entirety, and (3) remanding with instructions to dismiss the case.

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Respectfully submitted,

HUBERT H. HUMPHREY, III
Attorney General
State of Minnesota
JOHN R. TUNHEIM
Chief Deputy Attorney General
JOCELYN F. OLSON
Assistant Attorney General
102 State Capitol
St. Paul, MN 55155
(612) 296-2351

Attorneys for Appellant Joan Growe, Secretary of State, State of Minnesota

MICHAEL O. FREEMAN
Hennepin County Attorney
KERRY W. MEYER
Assistant County Attorney
C-2000 Government Center
Minneapolis, MN 55487
(612) 348-5550

Attorneys for Appellant Patrick O'Connor, Hennepin County Auditor, Individually and on Behalf of All County Auditors of the State of Minnesota

JOHN D. FRENCH
MICHAEL L. CHEEVER
THOMAS L. MCMASTERS
FAEGRE & BENSON
2200 Norwest Center
90 South Seventh Street
Minneapolis, MN 55402-3901
(612) 336-3000

PETER S. WATTSON
Senate Counsel & Research
G-17 State Capitol
St. Paul, MN 55155
(612) 296-3812

Attorneys for the Seventy-Seventh Minnesota State House of Representatives and the Seventy-Seventh Minnesota State Senate, Appellants

ALAN W. WEINBLATT
WEINBLATT & DAVIS
1616 Pioneer Building
336 North Robert Street
St. Paul, MN 55101
(612) 292-8770

Attorneys for Appellants Patricia Cotlow, Phillip Krass, Sharon LaComb, James Stein and Theodore Suss

No. 91-1420

In The
Supreme Court of the United States
October Term, 1991

JOAN GROWE, SECRETARY OF STATE OF THE STATE OF MINNESOTA, ET AL.,
Appellants,

vs.

JAMES EMISON, ET AL.,
Appellees.

Appeal from the United States District Court for the District of Minnesota

APPENDIX TO BRIEF OF APPELLANTS

APPENDIX TO BRIEF OF APPELLANTS
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STATE OF MINNESOTA
SPECIAL REDISTRICTING PANEL

C8-91-985

Patricia Cotlow, Phillip Krass
Sharon LaComb, James Stein, and
Theodore Suss, individually and
on behalf of all Citizens of
Minnesota similarly situated,

Plaintiffs,

and

John Walker, Howard Miller,
Don Sudor, and Nkajlo Vangh,

Plaintiff-Intervenors,

vs.

FINAL ORDER

Joan Growe, Secretary of State
of Minnesota; and Patrick H.
O'Connor, Hennepin County Auditor,
individually and on behalf of all
Minnesota county chief election
officers,

Defendants.

and

The Seventy-seventh Minnesota
State House of Representatives
and the Seventy-seventh Minnesota
State Senate,

Defendant-Intervenors.

I

Background

On June 4, 1991, the Minnesota Supreme Court appointed the undersigned panel to hear and decide this state legislative and congressional redistricting action on its merits. This charge has been met with respect to state legislative redistricting. On December 9, 1991, subject to the federal court's injunction in Emison v. Growe, No. 4-91-202 (D. Minn. Dec. 5, 1991), we issued a final and appealable partial judgment on the state legislative redistricting plan. Cotlow v. Growe, No. C8-91-985 (Minn. Sp. Redistricting Panel, Dec. 9, 1991). After the United States Supreme Court vacated the federal court's injunction, Cotlow v. Emison, __ U.S. __ (Jan. 10, 1992) (No. 91-1084), we formally entered final judgment as to state legislative redistricting on January 31, 1992.

With respect to congressional redistricting, this action has not yet been concluded on its merits. On September 13, 1991, we adopted final criteria for congressional plans and provided a format for submission of plans in the event the legislature failed to enact a constitutionally valid congressional apportionment plan. From

mid-September to early December 1991, the panel reserved substantive consideration of alternative congressional plans until legislative and executive consideration was complete.

On December 5, 1991, the federal court issued its order enjoining the parties to this action from implementing or enforcing any state court redistricting order, specifically enjoining the parties from participating in the state proceedings, and enjoining this panel from going forward on a congressional redistricting plan. Subject to the injunction, we ordered submission of proposed plans by January 17, 1992. This later date was selected to allow the legislature full opportunity to enact congressional redistricting legislation and to spare the parties potential conflict with the federal panel's injunction.

Although the Minnesota Legislature, on January 9, 1992, passed a congressional redistricting plan based on the 1990 federal census, the governor properly exercised his veto and the plan did not become law. See Minn. Const. art. IV, § 23 (providing governor with veto power and requiring two-thirds vote of each house to override); Duxbury v. Donovan, 272 Minn. 424, 432-33, 138 N.W.2d 692, 698 (1965). When the special session ended without enactment of a congressional plan and the injunction was vacated by the United States Supreme Court, this panel scheduled and conducted a procedural and motion hearing on February 17, 1992, to review the status of congressional redistricting and to resolve pending motions.

As stated in our March 3 order, the federal panel's issuance on February 19, 1992 of a congressional redistricting plan and its corresponding injunction imposed additional legal and jurisprudential constraints on publishing a state-court congressional plan. For a number of reasons, and particularly because an appeal of the federal panel's judgment was filed immediately with the

United States Supreme Court, dismissal of this action was inappropriate.

On March 11, 1992, the Supreme Court granted a temporary and limited stay of the Emison court's judgment affecting state legislative redistricting. Growe v. Emison, No. A-671 (U.S. March 11, 1992). The Supreme Court noted probable jurisdiction on March 30, 1992 without dissolving the stay. Pending a final decision on that appeal, this court's legislative redistricting plan will govern the 1992 elections.

Implementation of the federal panel's congressional redistricting plan has not been similarly stayed. Pending review by the United States Supreme Court and pursuant to the federal court's February 19 judgment, the federal panel's plan will control Minnesota's 1992 congressional elections.

The Supreme Court's noting probable jurisdiction over the complex jurisdictional questions that have evolved in this redistricting process puts the ultimate effectiveness of the federal panel's plan in question. Because the Supreme Court will ultimately determine this issue and has designated which plans will apply in the interim, publication of our congressional plan will not create undue confusion or exacerbate any difficulties of federal-state interaction.

For these reasons and to fulfill our charge of deciding this action on the merits and to allow a complete record on review, we adopt, subject to the district court's injunction and the Supreme Court's order of March 11, 1992, a plan of congressional redistricting created by this court.

II

Congressional Plan

The population shifts of the past decade have created population deviations in the 1982 congressional redistricting plan that exceed 22% in district 3 and 34% in the districts' overall range, in violation of the U.S. and Minnesota Constitutions' strict population standards. The plan we adopt eliminates these unconstitutional defects. As with the proposed plans submitted to the court and that created by the federal panel, the plan contains five districts of absolutely equal and "ideal" population.[1] The three remaining districts each exceed the ideal district size by only one person. The plan thus complies with Article 1, § 2 of the United States Constitution mandating equal representation and requiring districts to be apportioned as nearly to equal as is practicable. See Wesberry v. Sanders, 376 U.S. 1, 7-8 (1964). See also Minn. Const. art. IV, §§ 2, 3.

Some communities and counties have to be divided to achieve near-equal apportionment. Our congressional plan substantially minimizes the number of municipal and county splits while preserving the integrity of Minneapolis and St. Paul as distinct communities. Care was taken to avoid splitting any of the larger outstate cities between two districts. Our plan splits only 10 counties and 11 cities and townships for a total of twenty-one splits, far fewer than the plans proposed by the defendant-intervenors (28 total) and plaintiff-intervenors (40) and the plan created by the federal court (33).

---

[1] Dividing Minnesota's total census population by the number of its apportioned congressional seats, eight, yields an ideal district size of 546,887 people, with three people remaining.

To the extent possible, the plan segregates urban, suburban, and rural areas into discrete districts. Although not constitutionally compelled, the compactness of each district was also considered in this panel's attempt to create the most geographically and demographically consistent and convenient districts possible. See Minn. Const. art. IV, § 3.

As the plaintiff-intervenors' plan illustrates, greater compactness could have been achieved at the expense of splitting political subdivisions. Our plan balanced these two criteria, and, without expressly endorsing one approach to the exclusion of others, we note that, using the federal court's formula adopted from Polsby and Popper, The Third Criterion: Compactness as a Procedural Safeguard Against Gerrymandering, 9 Yale Law & Policy Review 301 (1991), our plan achieves a higher compactness percentage (.394) than either the 1982 plan (.347) or the current federal court plan (.346).

The parties have neither challenged the 1982 congressional plan under the Voting Rights Act nor presented any evidence of possible violation. By maintaining two primarily urban districts, the plan adopted attempts, in compliance with the Act, to avoid any unnecessary divisions of core minority populations.

Maps and population tables of the plan are attached as Exhibits A - F. Should any discrepancies exist, the census tract descriptions, which are on file, shall be deemed controlling. To insure compliance with this court's judgment determining the legislative redistricting plan of the State of Minnesota, and, if necessary, to oversee implementation of the contingent plan of congressional redistricting adopted by this court, we retain jurisdiction over this matter.

By separate order, we tax costs of approximately $28,000 against Joan Growe, Secretary of State of the State of Minnesota.

These are the total costs expended by the State panel for the legislative and congressional redistricting.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: April 15, 1992. BY THE COURT

/s/
Honorable Harriet Lansing

/s/
Honorable Kenneth J. Maas

/s/
Honorable William E. Walker

EXHIBIT A

1992 Congressional Districts

State Court Plan

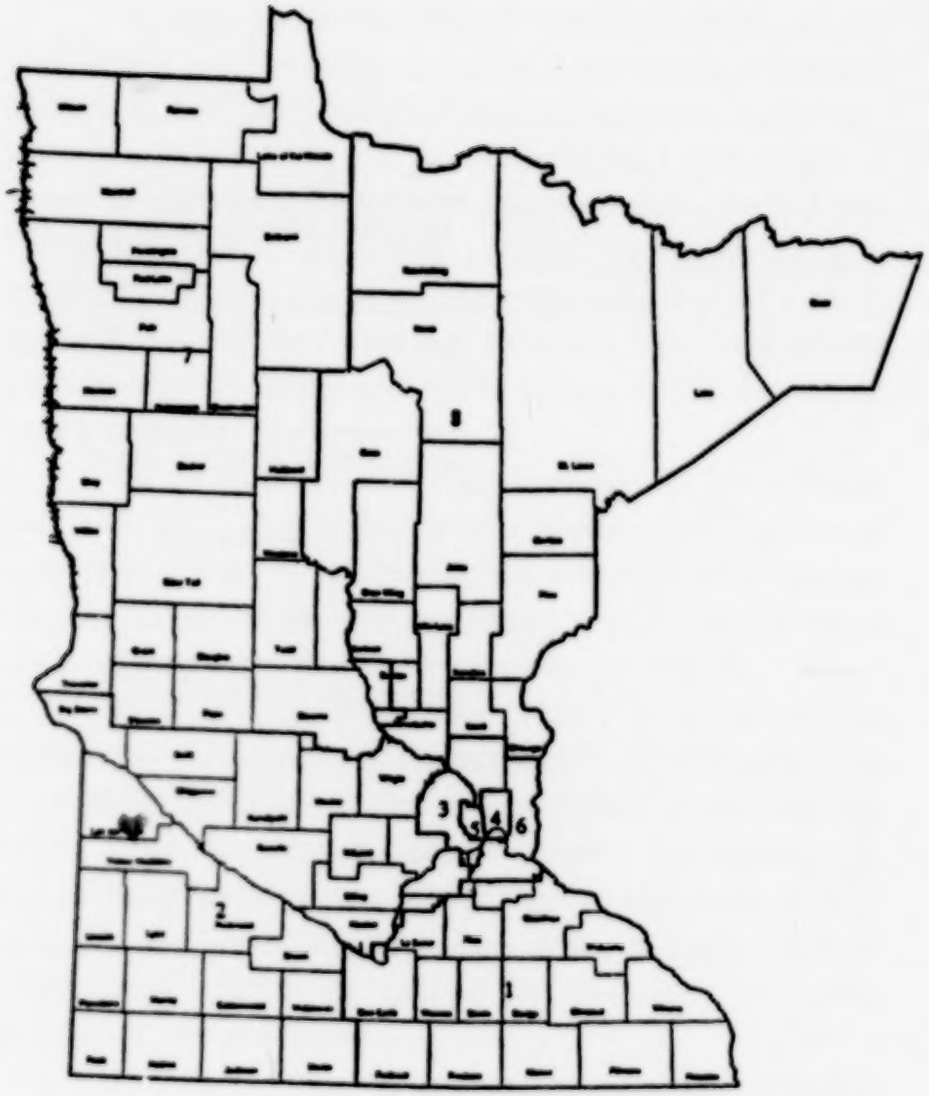

EXHIBIT B

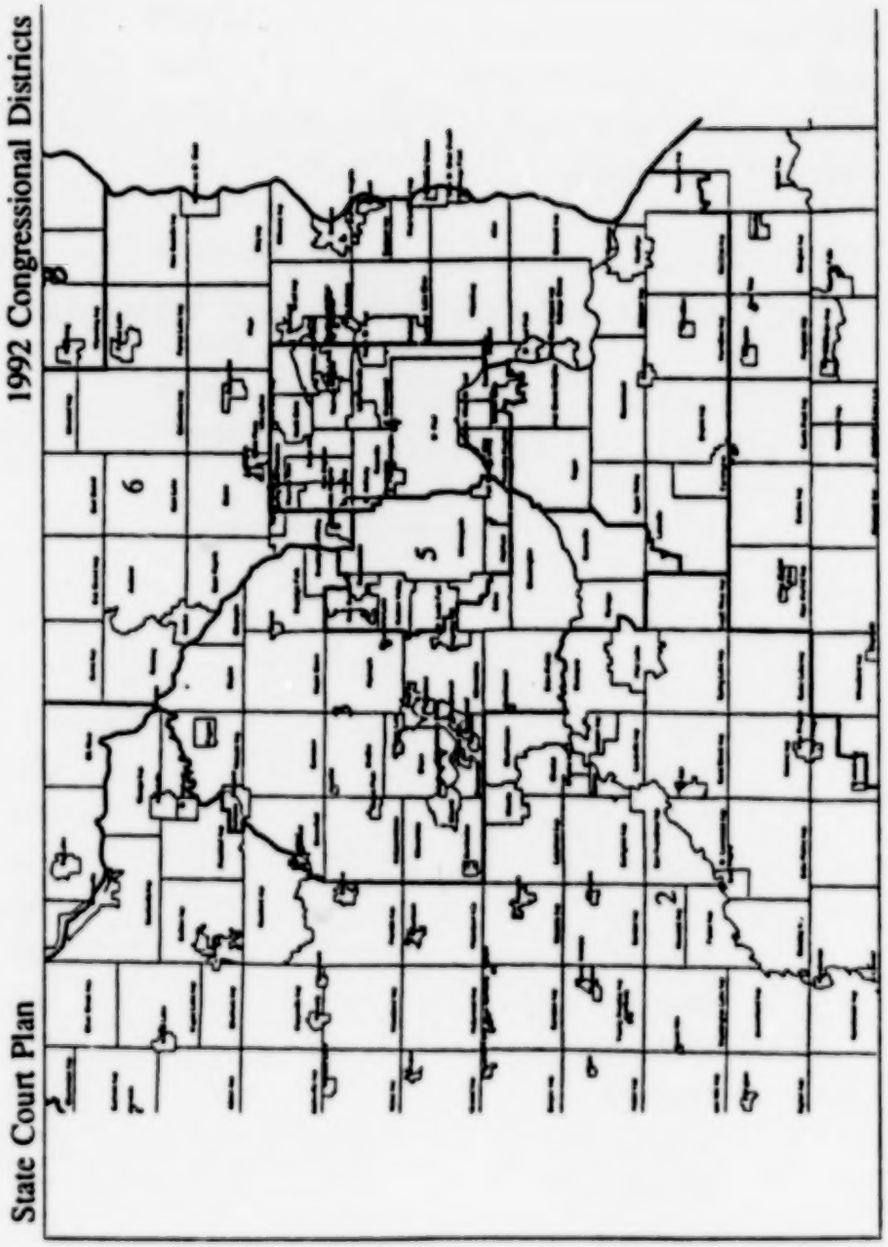

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EXHIBIT C

Support Name: POLITICAL SUBDIVISION SPLITS
Plan Type: CONGRESS
Plan name: STPANEL18
Date: April 03, 1992
Time: 10:27 AM
User: stpanel

Number of times a subdivision is split into more than one district:

Counties:	10.00
MCDs:	11.00
VTDs:	11.00

Counties Split:

County	District
Benton	007
Benton	008
Dakota	001
Dakota	003
Dakota	004
Dakota	006
Hennepin	002
Hennepin	003
Hennepin	004
Hennepin	005
Le Sueur	001
Le Sueur	002

Morrison	007
Morrison	008
Nicollet	001
Nicollet	002
Scott	001
Scott	002
Scott	003
Sherburne	007
Sherburne	008
Stearns	002
Stearns	007
Wright	002
Wright	003

MCDs Split:

County	MCD	District
Ramsey	Blaine city	004
Anoka	Blaine city	006
Stearns	Eden Lake township	002
Stearns	Eden Lake township	007
Hennepin	Edina city	003
Hennepin	Edina city	005
Dakota	Inver Grove Heights city	004
Dakota	Inver Grove Heights city	006
Dakota	Lakeville city	003
Dakota	Lakeville city	006
Le Sueur	Lanesburgh township	001
Le Sueur	Lanesburgh township	002
Morrison	Motley city	007
Cass	Motley city	008
Sherburne	Palmer township	007

Sherburne	Palmer township	008
Dakota	Ravenna township	001
Dakota	Ravenna township	006
Ramsey	Spring Lake Park city	004
Anoka	Spring Lake Park city	006
Ramsey	White Bear Lake city	004
Washington	White Bear Lake city	006

VTDs Split:

County	MCD	VTD	District
Dakota	31076	INVER GROVE HGHTS. P-1	004
Dakota	31076	INVER GROVE HGHTS. P-1	006
Dakota	31076	INVER GROVE HGHTS. P-5	004
Dakota	31076	INVER GROVE HGHTS. P-5	006
Dakota	35180	LAKEVILLE P-3	003
Dakota	35180	LAKEVILLE P-3	006
Dakota	53260	RAVENNA TWP.	001
Dakota	53260	RAVENNA TWP.	006
Hennepin	18188	EDINA P-2	003
Hennepin	18188	EDINA P-2	005
Hennepin	18188	EDINA P-7	003
Hennepin	18188	EDINA P-7	005
Hennepin	18188	EDINA P-16	003
Hennepin	18188	EDINA P-16	005
Hennepin	18188	MCD+ EDINA P-18	003
Hennepin	54214	MCD+ EDINA P-18	005
Le Sueur	35468	LANESBURGH TWP.	001
Le Sueur	35468	LANESBURGH TWP.	002

Sherburne	49534	PALMER TWP.	007
Sherburne	45934	PALMER TWP.	008
Stearns	18098	EDEN LAKE TWP.	002
Stearns	18098	EDEN LAKE TWP.	007

Report Name: District Populations
Plan Type: CONGRESS
Plan name: STPANEL18
Date: March 25, 1992
Time: 12:04 PM
User: stpanel

EXHIBIT D

District	Total Pop	Abs Dev	% Dev	Total 18+ Pop:
001	546,887	0	0.00	399,240
002	546,888	1	0.00	390,146
003	546,888	1	0.00	401,451
004	546,887	0	0.00	412,608
005	546,887	0	0.00	435,052
006	546,887	0	0.00	377,110
007	546,887	0	0.00	395,116
008	546,888	1	0.00	397,593
Plan Total:	4,375,099			3,208,316

Mean Deviation is: 0
Mean Percent Deviation is: 0.00

Largest Positive Deviation is: 1 0.00 Percent
Largest Negative Deviation is: 0 0.00 Percent

Overall Range: 1 0.00 Percent

EXHIBIT E

Report Name: MINORITY REPORT - TOTAL POPULATION
Plan Type: CONGRESS
Plan name: STPANEL18 Time: 9:08 AM
Date: April 03, 1992 User: stpanel

Dist	Black	%	Indian	%	Asian	%	Hispanic	%	Other	%
001	1,706	0%	1,329	0%	6,363	1%	5,403	1%	123	0%
002	776	0%	1,888	0%	2,799	1%	5,222	1%	92	0%
003	9,605	2%	1,868	0%	11,454	2%	4,945	1%	351	0%
004	22,482	4%	4,347	1%	24,810	5%	15,615	3%	519	0%
005	50,735	9%	12,596	2%	18,924	3%	9,654	2%	888	0%
006	4,638	1%	2,890	1%	7,279	1%	5,928	1%	214	0%
007	1,160	0%	12,005	2%	2,569	0%	4,334	1%	127	0%
008	1,938	0%	11,328	2%	2,031	0%	2,783	1%	115	0%
STATE TOTAL										
	93,040	2%	48,251	1%	76,229	2%	53,884	1%	2,429	0%

EXHIBIT F

03/27/92 Page 1

Compact by District
stpanel18

DISTRICT	POLSBY-POPPER INDEX
001	0.523
002	0.416
003	0.283
004	0.566
005	0.514
006	0.255
007	0.269
008	0.326

****

Average Compactness is: 0.394
Total Perimeter in MILES is: 3,933

****

STATE OF MINNESOTA
SPECIAL REDISTRICTING PANEL
CASE NO. MX 91-001562
CASE NO. C8-91-985

Patricia Cotlow, Phillip Krass
Sharon LaComb, James Stein, and
Theodore Suss, individually and
on behalf of all Citizens of
Minnesota similarly situated,

Plaintiffs,

and

John Walker, Howard Miller,
Don Sudor, and Nkajlo Vangh,

Plaintiff-Intervenors,

vs. FINAL PROCEDURAL ORDER

Joan Growe, Secretary of State
of Minnesota; and Patrick H.
O'Connor, Hennepin County Auditor,
individually and on behalf of all
Minnesota county chief election
officers,

Defendants,

and

The Seventy-seventh Minnesota
State House of Representatives
and the Seventy-seventh Minnesota
State Senate,

Defendant-Intervenors.

The panel has received what it characterizes as a motion for reconsideration of the March 2, 1992 motion of Plaintiff-Intervenors for dismissal or, in the alternative, summary judgment. For the reasons stated in this court's Final Order dated April 15, 1992, Plaintiff-Intervenors' original motion and their motion for reconsideration is denied.

IT IS SO ORDERED.

Dated: April 30, 1992 **BY THE COURT**

/s/
Honorable Harriet Lansing
Honorable Kennth J. Maas
Honorable Willian E. Walker

STATE OF MINNESOTA

SPECIAL REDISTRICTING PANEL

MX 91-001562

Patricia Cotlow, Phillip Krass, Sharon LaComb, James Stein, and Theodore Suss, individually and on behalf of all Citizens of Minnesota similarly situated,	)	
Plaintiffs,	)	
John Walker, Howard Miller, Don Sudor, and Nkajlo Vangh,	)	
Plaintiff-Intervenors,	)	
v.	)	COMPLAINT IN INTERVENTION OF PLAINTIFF-INTERVENORS WALKER, MILLER, SUDOR, AND VANGH
Joan Growe, Secretary of State of Minnesota, and Dale G. Folstad, Hennepin County Auditor, individually and on behalf of all Minnesota county chief election officers,	)	
Defendants,	)	

The Seventy-seventh Minnesota State House of Representatives and the Seventy-seventh Minnesota State Senate,	)
Defendant-Intervenors.	)

Plaintiff-intervenors John Walker, Howard Miller, Don Sudor, and Nkajlo Vangh, for their complaint in intervention, state:

1. This complaint in intervention is filed pursuant to stipulation of the parties and order of this Court under Rule 24.

2. Plaintiff-Intervenors John Walker, Howard Miller, Don Sudor, and Nkajlo Vangh are citizens and qualified voters of the United States and the state of Minnesota. Plaintiff-intervenors Sudor and Miller live in non-metropolitan areas in Minnesota. Plaintiff-intervenor Vangh is a member of a racial minority.

3. Defendant Joan Growe is the duly elected and qualified Secretary of State and the chief election officer of the state of Minnesota, and plaintiff-intervenors concur that her duties are those described in paragraph 3 of plaintiffs' complaint.

4. Defendant Dale G. Folstad is the duly qualified auditor of Hennepin County and is its chief election officer, and plaintiff-intervenors concur with the allegations of paragraph 5 of plaintiffs' complaint to the extent they allege that defendant Folstad will fairly and adequately represent the interests of chief county election officials.

5. Plaintiff-intervenors allege that plaintiffs will not adequately represent the interests of plaintiff-intervenors nor will they adequately protect the citizens of Minnesota, but plaintiff-

intervenors concur that this action should be designated a class action with both plaintiffs and plaintiff-intervenors as class representatives.

6. Article I, section 2, of the Constitution of the United States guarantees to the citizens of each state that their votes shall be equally as effective as any other votes cast in an election and that congressional representatives shall be elected on the basis of equal representation of individual voters. Further, this provision guarantees that congressional representation shall be apportioned throughout a state in districts that are, among other requirements, of equal population.

7. Any plan of congressional districts that does not meet the constitutional standard of equal population discriminates against voters in more highly populated districts, while exaggerating the power of voters in less populated districts, in violation of rights afforded under article I, section 2, of the United States Constitution. Any action of defendants in enforcing or implementing a plan that does not meet constitutional or other legal requirements violates the rights of plaintiff-intervenors and similarly-situated citizens and voters of Minnesota.

8. Minnesota's current congressional districts were established and remain in force by continuing order of the United States District Court for the District of Minnesota in LaComb v. Growe, 541 F. Supp. 145 (D. Minn. 1982) (Civ. 4-81-414) aff'd sub nom. Orwoll v. LaComb, 456 U.S. 966 (1982).

9. The United States Department of Commerce, Bureau of Census, has issued statistical data from the 1990 census showing that the congressional districts ordered by the United States District Court for the District of Minnesota in 1982 are no longer equally apportioned.

10. The legislature of the state of Minnesota ("the

legislature") possesses state constitutional authority to prescribe the boundaries of congressional districts at their first session following each federal decennial census. Following the 1980 census, the legislature failed to establish new congressional districts in accordance with constitutional requirements. Following the 1990 census, the legislature received census data showing that congressional districts established by continuing order of the United States District Court for the District of Minnesota in 1982 are no longer equally apportioned. In its 1991 session, the legislature did not consider or pass any legislation drawing new congressional districts.

11. On information and belief, defendants intend to conduct their duties with respect to the 1992 primary and general elections for Minnesota's congressional representatives based on current congressional districts.

12. Plaintiff-intervenors intend to vote in the 1992 primary and general elections for congressional representatives. If these elections are conducted on the basis of current congressional districts, or on the basis of new districts that do not meet constitutional or other legal requirements, plaintiff-intervenors and other similarly-situated citizens and voters will be denied their constitutional or other rights.

13. Section 1 of the fourteenth amendment to the Constitution of the United States guarantees the citizens of each state that their votes shall be equally as effective as any other votes cast in a federal and state election and that state legislative representatives shall be elected on the basis of equal representation of the individual voters in a state by apportioning such representation throughout a state in legislative districts that are, among other requirements, of equal population.

14. Any plan of state legislative districts that does not

meet the constitutional standard of equal population unlawfully discriminates gainst voters in more highly populated districts, while exaggerating the power of voters in less populated districts, in violation of rights afforded under the fourteenth amendment to the United States Constitution. Any action of defendants in enforcing or implementing a plan that does not meet constitutional or other legal requirements violates the equal protection and due process rights or other rights of plaintiff-intervenors and other similarly-situated citizens and voters of Minnesota.

15. The United States Department of Commerce, Bureau of Census, has issued statistical data from the 1990 census showing that the state legislative districts ordered by the United States District Court for the District of Minnesota in 1982 are no longer equally apportioned.

16. The legislature possesses state constitutional authority to prescribe the boundaries of state legislative districts at its first session following each federal decennial census. Following the 1980 census, the legislature failed to establish new state legislative districts in accordance with legal requirements. Following the 1990 census, the legislature received census data showing that state legislative districts established by continuing order of the United States District Court for the District of Minnesota in 1982 are no longer equally apportioned. In its 1991 session, the legislature passed legislation establishing new state legislative districts. The Ramsey County District Court has ruled that the Governor's attempted veto of that legislation was invalid, so it has now become law.

17. The new state legislative districts created by the 1991 legislature do not meet constitutional and other legal requirements.

18. On information and belief, defendants intend to conduct their duties with respect to the 1992 primary and general

elections for state legislative representatives based upon the new state legislative districts created by the 1991 legislature.

19. Plaintiff-intervenors intend to vote in the 1992 primary and general elections for state legislative representatives. If these elections are conducted on the basis of the new state legislative districts created by the 1991 legislature, plaintiff-intervenors and other similarly-situated citizens and voters will be denied their constitutional or other rights.

20. The legislature has represented in this action and in a parallel redistricting action pending in United States District Court for the District of Minnesota, entitled Emison, et al. v. Growe. et al., Court File No. 4-91-202, that in January 1992 it will adopt legislation that will become law establishing new congressional districts and amendatory legislation correcting constitutional or other legal deficiencies in the new state legislative redistricting plan. Based upon those representations, by a Memorandum Opinion and Order, dated August 21, 1991, the federal panel in Emison has directed that the legislature's plans for congressional and state legislative redistricting be presented to the federal panel on or before January 20, 1992.

WHEREFORE, plaintiff-intervenors pray for the following relief:

a. That this Court issue an order fixing a reasonable time within which the legislature may adopt congressional and state legislative redistricting plans meeting constitutional and other legal requirements and staying further proceedings in this Court pending compliance with such order.

b. That this Court will permit plaintiff-intervenors to participate with the other parties in any consideration and review by the Court of laws

establishing new congressional districts or state legislative districts, or both.

c. That if this Court considers and establishes plans for congressional districts or state legislative districts, or both, the Court will permit plaintiff-intervenors to participate in all aspects of the case, including assistance to the Court in developing criteria for such plans, and the Court shall permit and consider plans submitted by plaintiff-intervenors and allow plaintiff-intervenors to comment on plans submitted by others.

d. That the Court award plaintiff-intervenors their reasonable attorneys' fees and expenses, expert fees and costs, and other expenses incurred in this action.

e. That this Court order such other relief as is just and equitable in the circumstances.

Dated: August 26, 1991

POPHAM, HAIK, SCHNOBRICH & KAUFMAN, Ltd.

By /s/

Bruce D. Willis Reg. No. 117572
Mark B. Peterson Reg. No. 14440X
3300 Piper Jaffray Tower 333-4800
222 Ninth Street South
Minneapolis, Minnesota 55402

Attorneys for Plaintiff-Intervenors John Walker, Howard Miller, Don Sudor, Nkajlo Vangh.

ACKNOWLEDGMENT

The undersigned hereby acknowledges that costs, disbursements, and reasonable attorneys' and witness fees may be awarded pursuant to Minnesota Statutes, Section 549.21, subd. 2, to the party or parties against whom the allegations in this pleading are asserted.

/s/
Bruce D. Willis

SENATE REDISTRICTING MEETING
May 3, 1991
107 State Capitol
8:00 a.m.

Transcribed by Mary Hennessy
Committee Secretary

SENATOR MOE: On the agenda which you have before you we'll have some discussion about the population shifts, no. 1 and 2. We will not be discussing anything as relates to no. 3 and 4. We have some interesting maps put together as it relates to the minority population, the major concentrations of minority populations, which happen to be here in the Twin Cities, and we'll show you some maps as it relates to that. In terms of the population shifts do you want to start with Mr. Wattson, or Allen Hagen, which of you wants to proceed?

MR. WATTSON: Mr. Chairman, I can proceed. Basically to remind you of the information we went over in the Committee at some of the very first meetings in January and February. And if you recall, we had some maps of the state showing changes in population of municipalities with outlines of the house districts shown on the map and you'll recall that what those maps showed was that the population of Minnesota between 1980 and 1990 had declined in three of the four corners of the state with population

moving out of northeast Minnesota, northwestern Minnesota and southwestern Minnesota and moving into the Twin City area. And you'll recall we had a second map of the Twin City area that showed a population gain. Now those population gains were in the second- and third-tier suburbs. What was a surprise to me in those maps was that, not only did the central cities stay about the same or maybe lose some in population, but also the first-tier suburbs lost some population, especially in the suburbs north of Minneapolis in the Fridley, Spring Lake Park area. So, you knew, you all knew that based on the population counts that we had last fall and early this winter that there was going to be a shift of senate seats out of rural Minnesota and into the metropolitan suburbs. In August the Census Bureau had released some preliminary population counts. I think you will recall that in your Redistricting Handbooks we had copies of those preliminary population counts as well as maps from the State Demographer that showed this population shift I was just describing. In your books also was a table showing the impact of those shifts on the senate districts and it showed the amount of population, the number of seats, that was shifting from greater Minnesota to the metropolitan area was about 2 senate seats worth of population was shifting into the metro area and about one-half senate seat (about one house seat) was shifting from the central cities of Minneapolis and St. Paul to the suburbs. So, Minneapolis and St. Paul will lose one house seat and the suburbs will gain 2 senate seats from rural Minnesota and a half senate seat from the central cities, so a net gain of about three. So, you would expect to see in any plan that is drawn three pairs of incumbents in greater Minnesota, people who are put together in the same district because there isn't a seat there anymore, and you would expect to see in the metropolitan area suburbs, somewhere, three open seats. That's what we knew,

that's what you knew based on those preliminary population counts that came out in August and the information that was in your Redistricting Handbooks that you got in January. What has been happening since then is to find out what is happening, exactly where those lines are going to be drawn and who are going to be the three unlucky people who get paired with another incumbent and where will those three new opportunities in the suburbs be. For the suburban opportunities, I think you will recall, the most over-populated senate district in the State is Senator McGowan's district. And the City of Maple Grove was one of the fastest growing cities, so somewhere up in that area is likely to be an open seat, somewhere up in that northern suburban area. The second fastest-growing municipality I think was Egan, and the district down there I think is Senator Pariseau or Halberg. Senator Halberg's district is about the second fastest growing and somewhere down in the Egan area is likely to be a new open seat, under whatever kind of plan that you draw. Whoever draws the plan, that's going to happen. Somewhere else in the metro area, probably in the southwestern suburbs there would be an open seat. But just exactly where that would be, you couldn't tell based on those figures that you had back in January and that's what the work of the committee and the staff has been in the last few weeks to try and to figure that out. In one of our earlier meetings, Senator DeCramer raised the point about preserving the cores of prior districts and I said you can do that to some extent and keeping their old district to some extent, but on the other hand, the whole point of doing a new census and having to do redistricting is that things have changed, things have shifted, and as three districts get wiped out in greater Minnesota and three new ones get created in the metropolitan suburbs there are going to be some shifts in district numbers. Now, who is going to get new numbers

and when those numbers will change we don't know, but just at some point. But when we are done, there is going to be a change.

SEN. POGEMILLER: Mr. Chairman, one thing we need to keep in mind a little bit is that the points Mr. Wattson has made regarding population shifts are from kind of a Senate perspective using kind of a Senate geography. I think when you are talking double the number of districts as what the House is dealing with, there is a slightly different emphasis on that discussion, not major, but slightly different and one might view it slightly different. I think the Senate, since we would like to figure out a way to work things out with the House of Representatives, we want to be a little careful not to just get locked in on the Senate perspective.

SEN. MOE: So, instead of referring to it as one senate seat we'll say two house seats. I'm being ------. Senator Pogemiller, the fact of the matter remains, we know where the population is at. The population shifts are the same regardless, we know where the movement is that's fairly, not only the visuals that have been created through the various models, stands out in terms of the packet of information that was prepared for us from the beginning. It was very obvious.

SEN. DECRAMER: I gather from the comments made by Counsel Wattson that half of the inner city seat is going to then mean that some of the Minneapolis-St. Paul city seats will start taking in some of the first-ring suburbs, that is stating the obvious. I can imagine that expansion could occur for one or two house seats or one senate seat. One senate seat might be a mix of a city and a suburb or all of the seats that are on the outer side could move out partially into the suburbs. Is there a reason to do it one way or the

other? If we create one seat that is really a mixture, or is it important to have a mixture in all the seats that bump up against the first ring?

SEN. MOE: I think the first thing to remember is that at the present time I believe that Senator Marty's district in St. Paul, is part of the City of St. Paul and goes out into Roseville. That is an example. As it relates to the other question, the guiding principle there at least as the Senate is concerned would be that the resolutions that we have, and if I'm not mistaken, one of those principles, was to as much as possible to adhere to political subdivision lines as much as possible. In other words, let me just read it here: "a county, city, or town must not be divided into more than one district except as necessary to meet equal population requirements or to form districts that are composed of convenient, contiguous territory." As much as possible we want to adhere to those principles and I'd like to make sure, as you know those principles have been on the desk now for a couple of days in the form of the house concurrent resolution, and I believe they are going to take those up sometime today, try to get those processed. So, as much as possible we want to meet that requirement.

Any other questions of Mr. Wattson on those first points as relates to the population shifts and those impacts? If not, then who is going to do the presentation on the minority discussion, minority districts? Mr. Pogemiller, are you going to do the presentation?

SEN. POGEMILLER: Yes, Mr. Chairman. One of the first things that one has to pay attention to in drawing lines and according to our criteria and according to court decisions is to be sensitive to people-of-color populations–racial and language minorities. Some

of the initial work that we have been doing, and I believe the House of Representatives has been doing, is looking at where those populations are in our state, and in the urban areas there are basically three areas where there are concentrations, and if I could go to the map real quickly and look at that. I want to point out, we have a handout in front of us, that what we will look at is not districts, are not senate districts, they are footprints of where you can gather or put a line around the largest percentage population, and so it clearly will give an outline of where a potential senate district might be, but we do not want people to lock in on those particular lines because they are done at a precinct level which currently exists and there will be some carving around those districts to enhance the area.

SEN. MOE: Let me simply confirm that while Senator Pogemiller is coming up to the maps that, repeat, these are not districts but rather ideas for individuals and groups to react to, so that is the purpose of all of this.

SEN. POGEMILLER: Mr. Chairman, we are dealing with mostly Minneapolis and St. Paul. There are populations in greater Minnesota, but they don't reach the percentage levels in Minneapolis and St. Paul. These are broken down in groups.

This is the City of Minneapolis here roughly, the City of St. Paul, here, downtown. And, dealing first with the American Indian population, you can see where the concentrations are in Minneapolis. Just south of downtown, Powderhorn area, (inaudible portion, Pogemiller not at microphone but at maps), Hiawatha, people who live in Minneapolis, is fairly direct. This is a north Minneapolis area roughly, Lowry Avenue here, Broadway Avenue

here and Lyndale going through here. That clearly is an American Indian population. These demonstrate a lot of population numbers, so these are raw numbers as opposed to percentages.

The Hispanic population Minneapolis again is the downtown, the same census block in north Minneapolis and then a census block in south Minneapolis, I believe Lake Street is right here, I'm sorry precincts, not census blocks, right here is Lake Street. But, as most Minnesotans know there is a much larger Hispanic population in St. Paul. Here is the downtown area and this is West St. Paul. University Avenue is here.

The African American population, this is fairly dramatic, it gives an outline fairly quickly where our people-of-color populations are. Downtown St. Paul, University Avenue, the Hispanic populations are here, African American populations here are heavy. There is one are out here, Larpenteur. Then we come to Minneapolis. Here is the downtown, north Minneapolis, here is the city border, the Mississippi River goes right here. There is a clear population pocket in the Minneapolis area north of downtown and south Minneapolis, this general area of color near the Philips neighborhood. Further south this is 50th Avenue here, Nicollet Avenue here. I think members can see there are well defined areas in the cities.

(INAUDIBLE PORTION)

SEN. POGEMILLER: This again, is not to place districts, but to place a footprint when you combine all those people-of-color populations, this is what you come out with. Minneapolis border, St. Paul border and you can see three footprints, the St. Paul area,

the river here. This is not unsimilar to current Senate District 65, Senator Pappas's district, very close, there is a slight variation. This variation is a precinct that includes the Crocus Hill area.

SEN. MOE: That has to do with geography though. It's a large bluff, it is a precinct.

SEN. POGEMILLER: That is Crocus Hill, which is, which does not have a very large minority population.

(INAUDIBLE PORTION)

SEN POGEMILLER: Minneapolis, then, you have two clear footprints with the downtowns separating them. The one is the city border, railroad tracks, Hennepin Avenue, very similar to the current Senate District 57. The major difference is that there are two precincts right here that on several of the maps have a large percentage of people of color that are in the east side district. It is clear to me that has to move back. So that's a fairly well defined area.

South Minneapolis footprint looks not dis-similar to Senator Berglin's district. Again, Hennepin Ave, freeway, this line is a little west, narrow precincts here. One thing we want to point out with this footprint: it is possible based on the census tract, the precinct numbers, is not included in this footprint but could be and the Cedar Riverside district is not included but could be. So those are considerations. These footprints on the sheet at your desk give you these populations and deviations and they are pretty close. However, one would want to carve around here to enhance the percentage and take into account the particular neighborhoods, and

one would want to be sensitive how you draw lines through the Powderhorn neighborhood. What we are looking for Mr. Chairman, members of the Committee, is input from the community as to how they, with that as the basic footprint, what would the suggestions be on how to fine-tune? I do want to point out that we have, Representative Richard Jefferson and I have, met with persons of color and with representatives in the neighborhoods, Senator Cohen has met with groups in St. Paul, not only to discuss this and have had some input, that is what led us to draw this footprint just outside downtown, but we don't know that's the direction we ultimately want to go. There is some discussion that perhaps the population here is not as helpful. But those are the fine-tune things we need to discuss with neighborhoods, communities.

SEN. COHEN: Mr. Chairman, do you mind if I just show members of the Committee, I was hoping that Senator Pogemiller could show where the Asian population is in St. Paul, but apparently we can't get access to the map that has been prepared, so maybe I could just indicate where the concentrations are. (Inaudible portion as Senator Cohen moved away from the microphone to the maps.) As Senator Pogemiller mentioned, there is a dispersal of Asian population in St. Paul. When members do see the map, you will notice a concentration of the Asian community in this area, the McDonough housing project. It is something like 90% Asian, 2,000 people approximately. There is another concentration on the near east side, about 1,000 people, and in terms of drawing a footprint of a map, it was impossible, you also notice that there is a significant Asian population within this footprint and is somewhat dispersed. Southern part of footprint, members will notice, there is significant concentration in

St. Paul, here and here. In terms of trying to put them all in one footprint, geographically, it is impossible. I want to make that clear to members of the Committee.

SEN. POGEMILLER: Thank you Senator Cohen. Mr. Chairman, I want to direct members to the handout. The north Minneapolis footprint puts you in the range of 39% people-of-color population–39% of the total, 28% African American, 3% American Indian, 6% Asian and 2% Hispanic. The south Minneapolis footprint gets you roughly 46% people-of-color population. With again 28% African American, 9% American Indian, 6% Asian, 3% Hispanic. And then finally, the St. Paul footprint, roughly 42% people-of-color population, a little smaller African American population 18%, smaller American Indian 2%, but the Asian is 13%, as Senator Cohen has just pointed out, and the Hispanic is 9%. So Mr. Chairman, again, these are not districts, they are footprints. We need fine-tuning based on block-by-block data and input from the community, although there has been some input from the community, we just would like to broaden that input at this point.

SEN. MOE: Any questions of Senator Pogemiller?

SEN. COHEN: Mr. Chairman, let me just mention one other thing relative to the Asian community in St. Paul. Senator Pogemiller has concentrated on the attempt to concentrate those minorities, as would be appropriate under the case law. Again, if I could reference the problem with the Asian community in St. Paul, with the time we spent with them one concern they expressed, separate from the other minority groups was the concern that because of their dispersal, they were interested in concentration like the other

groups, but also had some concern to make sure at least in St. Paul, there be some attempt to take into account their dispersal throughout the city. So we spent some time discussing those concentrations. The point is a little vague, but I want to make clear to everybody that they had some separate concerns that Counsel and Mr. Hagen tried to take into account.

SEN. MOE: Again, what you've done with these models is to strengthen as much as possible the minority population's voting block by finding the concentration and drawing the line around it to maximize their voting potential. That's a quick summary.

SEN. COHEN: Yes, in so far as St. Paul is concerned, separate from those two particular concentrations that are close to the northern border of St. Paul, if we could see the Asian overlay along with the Black and Hispanic, you would notice that one footprint has close to a high percentage of the minority population of all three groups in St. Paul.

SEN. POGEMILLER: Mr. Chairman, just briefly, I want to mention Minneapolis. There has been some consultation with people of color. They have included local elected officials in Minneapolis, NAACP, persons who have been appointed to discuss redistricting for their organization and the Urban Coalition. But again, it's not a large, large group. Senator Cohen can mention who he has consulted with in St. Paul.

SEN. COHEN: Mr. Chairman, some of the same individuals and groups. Senator Pogemiller mentioned he has worked with Representative Jefferson. I've done some work with Representative Mariani, who represents the West Side house

district and is one of the Hispanic members of the House of Representatives. Councilman Bill Wilson, who is on the St. Paul City Council, spent quite a bit of time with us. We also had individuals as Senator Pogemiller did, from the NAACP. We had representatives of all the minority councils that worked with us. And then we had several members of the Asian community as well.

SEN. MOE: Any questions of either of them at this stage? If not, then we will again, hopefully, get some reaction back on this discussion we had this morning.

SEN. POGEMILLER: Mr. Chairman, one final point, as per your instructions as Chair. I think the intent is to work out from these footprints. This is of major importance that we do this right with community input and at least the message I have received from you is that this is of the highest priority and we want to work around these types of footprints to create our other senate districts.

SEN. MOE: That's correct.

Any other comments or questions? Senator Storm.

SEN. STORM: Mr. Chairman, just one quick comment that I think we need to address as we proceed from here. It is my understanding that in as much as Mr. McCarty's time has been directed by yourself or Mr. Pogemiller or whoever, on focusing on preparing to present these types of colored charts, he has not been able to spend the time, our station for example, simply to work out the bugs so that we can even start moving in this direction. It seems to me that if the process is going to be fair, and I suspect

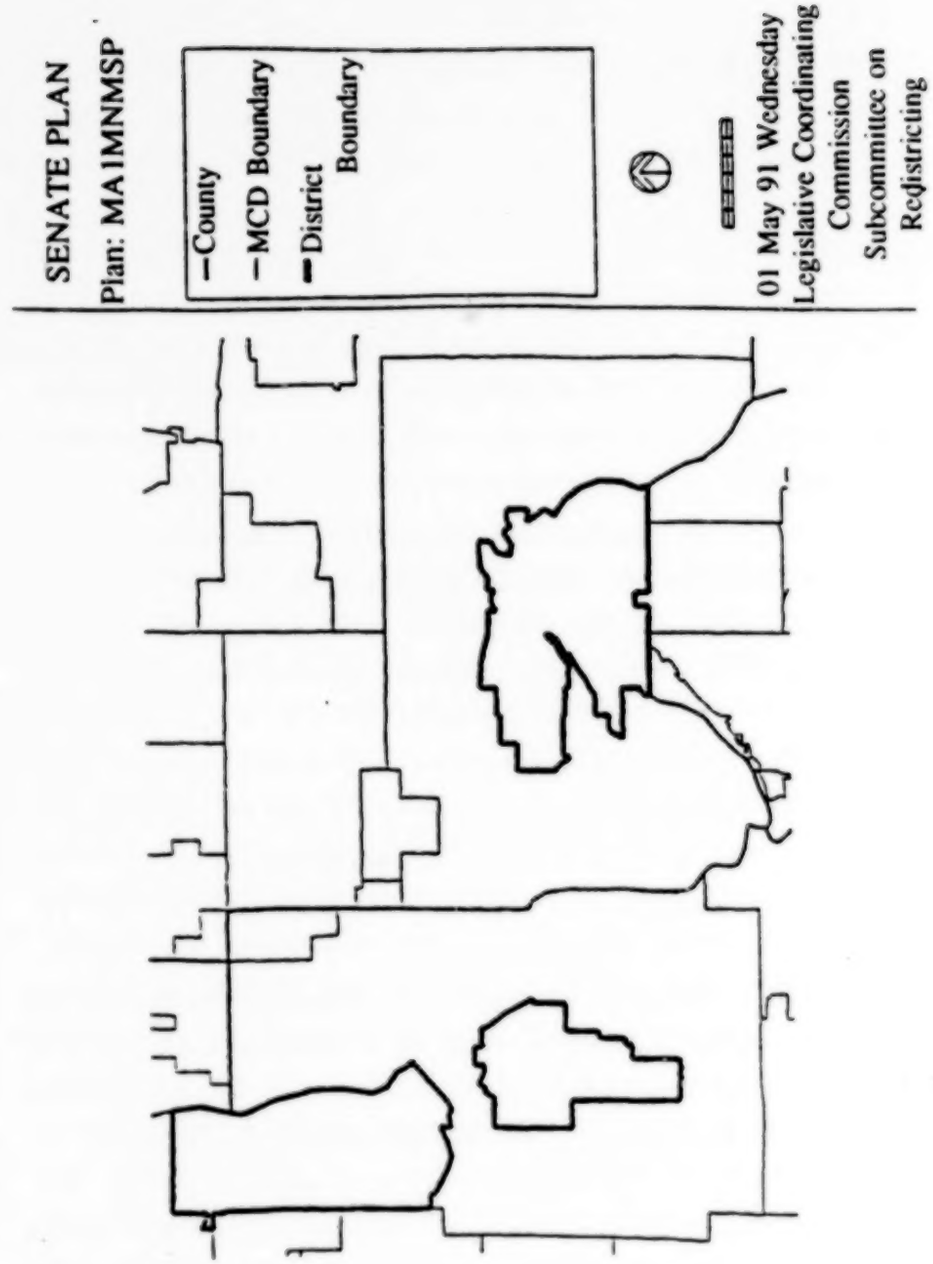
you would like it to be that way, we're going to have to get together, determine how his time is divided so that at least all of our stations can be operating at the same level, and I would not only ask but urge that either the subcommittee be directed to agree on a prioritizing of time or this Committee so we can at least all of us operating at the same level.

SEN. MOE: That's a good point, and let me just say that I know even without asking you that this is equally high a priority with the Republican Caucus as it is with the DFL Caucus. I think we instinctively know that that concentration of population deserves special attention as granted by the courts in previous rulings, so the work that he has done for these particular maps, or outlines if you will, is universal, is as valuable to your caucus as it is to ours as it is to the greater community, so I don't think that is not time that is granted to one child and not to the other. I think that is equal time.

SEN. STORM: Mr. Chairman, I am not questioning the value of the work. I'm simply pointing out that as that priority was determined by someone which our side had no input on, it has impeded us even getting to a starting level and I can sense that Mr. Hagen and your people are considerably beyond the level where we are. The reason for that is that Mr. McCarty cannot get over and help us work out those bugs.

SEN. MOE: No question about it, I'll try to be a bit more sensitive to that.

Any other questions or comments? If not, thank you, we stand adjourned.



May 15, 1991
318 State Capitol
5:00 p.m.

S.F. No. 1571
Public Testimony

Mr. Bill Davis, NAACP
Mr. Bill Wilson
Mr. Jim Mulder, Association of Minnesota Counties
Mr. Richard Tanner, Minnesota Chippewa Tribe
Mr. Todd Otis, State Democratic Farmer Labor Party
Mr. Bob Weinholzer, State Independent Republican Party

Transcribed by Mary Hennessy
Committee Secretary

(Explanation of S.F. No. 1571 not transcribed.)

SEN. MOE: A number of people have indicated an interest to say a few words and I'd like to ask those to testify at this time. I'll just go right down this list that I have. Mr. Bill Davis, representing the NAACP. Mr. Davis, welcome.

MR. DAVIS: Thank you Mr. Chairman. Members of the committee, ladies and gentlemen, my name is Bill Davis. I am the Chairman of the Political Action Committee for the Minnesota Dakota State Conference for the National Association for the Advancement of Colored People, also known as the NAACP. I also serve as the First Vice-President and Chair of the Political

Action Committee for the Greater Minneapolis branch of the NAACP and also serve as the chair of the statewide organization known as the Minnesota African American Political Caucus.

Mr. Chairman, I appreciate the opportunity to be here today, to speak to you on the issue before you, the redistricting proposal. I have been a party to numerous discussions regarding this with Senator Pogemiller. Several members from the community of color have been invited in from time to time to review the basic footprints of the general area that is being proposed. Let me back up and say that nationally the NAACP is very interested in redistricting. Statewide, nation-wide this has become one of our top priorities. We have established a redistricting committee, which I am chair of as well, and we have been asked to monitor redistricting activities throughout the State of Minnesota, as well as in our local area and to report back to the national office. It is our feeling that we are either locked in or locked out for the balance of this century, so we feel that redistricting is very very important to the community of color. As I mentioned, I have been afforded the opportunity along with other people of color to participate in this process and we have been extended an opportunity to sit down in front of the computer to do some carving out of districts to make sure we have a fair and as well as an opportunity to have representation. This is not an assurance by any stretch of the imagination but certainly to provide an opportunity for a person of color to be elected and particularly the three districts we spoke about earlier: Senate District (I'm only familiar with the old numbers) but Senate District 57, which is now 58; former Senate District 60, which is now 61; and 65, which is in St. Paul, which still remains Senate District 65. Those three areas as well as a couple of senate districts in northern

Minnesota have a significant population of color. Those issues are key to us because, as you know, the voters right act allows and encourages groups, particularly people of color, to come forth, particularly if they feel the plan excludes opportunity for running for public office. So we were very much concerned about this process. I think its important to point out that it's necessary, in fact imperative, that some action be taken very soon with respect to drawing these lines, so that the community of color can begin to organize in those respective communities, as opposed to waiting for a year or for a special session to take place. We think that the technology is there, as Sen. Pogemiller has already spoke to. This is not the 60's the 70's or the 80's when we did not have that type of technology that we currently have available to us in the 90's. I think with the advent of the computers and the programs it makes it much easier to draw a fair boundary for the various communities. So I would urge this committee to move forward with this process, continue to solicit input from other individuals who would like to step forward. But clearly, delaying this process will only hamper the opportunities for particularly communities of color who organize, which also may give rise to some further challenges if that is perceived to be the situation.

I think this plan sets the standards by which cities will begin to draw their boundaries. That is also critical and very important to the community of color that the lines for the cities be drawn as soon as possible as well. We have elections that will be coming up in '92 and '93 and we would like to have the opportunity and the luxury of identifying these individuals in these areas to represent us where there is a large concentration of people of color.

Mr.Chair, that concludes my remarks and I certainly will answer any questions people would have at this time.

SEN. MOE: Thank you Mr. Davis. Are there any questions of Mr. Davis at this time? Sen. Storm.

SEN. STORM: Mr. Chair, Mr. Davis, two questions. One, have you scrutinized any part of the plan other than the districts pertaining to communities of color?

MR. DAVIS: Mr. Chairman, principally when viewing the communities of color, the three district we talked about, certainly had an opportunity to look at how that affects the other districts adjacent to it but not much beyond that. That's where our principal focus and concentration has been. I should also add that this process, I had an opportunity to participate in 1980, and in comparison this is certainly a more fair and open process, afforded a number of people an opportunity to review the districts. In answer to your question, it was limited to the three specific districts with the exception of the other districts in close proximity to it.

SEN. STORM: Mr. Davis, I'm glad, as you are, that there has been some open discussion (inaudible portion). What's difficult for me is to place that in context of a total plan. I can appreciate that you feel portions of the plan are very acceptable and very appropriate. I can't accept that as an endorsement of a plan for the State, and I'm sure you can understand the need to scrutinize it on a much larger basis.

The second question, if we were looking at an ideal time frame and you're saying you too feel a sense of urgency, could you help us with some parameter? Is it imperative in your opinion that this be passed this week, or for communities of color, if it were to be passed August 1st, would that still be acceptable?

MR. DAVIS: Mr. Chair, Senator Storm, I think that the sooner the plan can be adopted and the lines can be identified, then we can move on to the next process, which will be ultimately any challenges that may occur. That's always going to add additional time to the process. If we do not ratify a plan until August, let's say, then we have a door, a window, which will give people an opportunity to challenge the plan, which then would extend it beyond that period of time. I would think what we are trying to do is get something out, something to the public, put some parameters down, allow people to react to it and move forward. I think this is the first step of a many many step process. I think it is a good step. I would encourage you to follow the suggestions of the Chair, when he suggested that we move forward, have additional hearings, let people react to it. This is not a new phenomena. People knew that redistricting was going to take place. This is not a new subject matter. I think that everyone in this room knew, had a rough idea where the lines were going to be drawn, if not the exact lines. I don't think this is new information that anyone is receiving today. In this particular format it may be new, but not the notion of redrawing the lines. So, I think the opportunity has been afforded people and those who were conscientious, eager, interested, made every effort to avail themselves of this information, and I think now is the time to act and move forward and then allow whatever challenges to come forth at that time.

SEN. STORM: Mr. Wattson, what is the mandated time frame? When must we have a plan prior to (Inaudible portion)?

MR. WATTSON: Mr. Chairman, Senator Storm, the constitution and the statutes don't lay down a firm date by which the Legislature has to act. In other states they do have constitutional and statutory deadlines. We don't. We have a practical deadline of March 24th or March 25th 1992. If the Legislature has not completed action by that time the courts would feel it incumbent upon them to impose a plan so that the redrawing of the municipal precincts, the city wards, the county commissioner districts could go forward in advance of the filings opening the first part of July.

Is there a deadline when a person could file a lawsuit? Not really. If the plan passed by the Legislature in the 1991 session, the Governor signs it, it could be subject to a court test immediately. The court has the summer and fall to examine it, scrutinize it, throw it out if it doesn't meet constitutional requirements, and the Legislature has the opportunity to come back and meet the court's concerns. If the Legislature doesn't act until February or March of 1992, then the court review has to occur at a time when there is no opportunity for the Legislature to come back and fix things. It is too late in the process. So those are the practical deadlines and practical considerations that we face.

SEN STORM: So that early completion, Mr. Chairman, does not necessarily preclude challenge at any point along the way.

MR. WATTSON: Mr. Chairman, Senator Storm, not at all.

SEN. COHEN: Mr. Chairman, Mr. Davis, I don't want to put words in your mouth, and maybe Councilman Wilson who is present might agree with this. When I worked with minority communities in St. Paul, I know one concern relative to the timetable was that everybody else waits for us. So in order to draw precincts within municipal lines and try to create some county board districts or city council wards that would reflect minority population, whatever, it was felt there was some urgency. I don't know if that is your sense as well.

MR. DAVIS: Mr. Chair, Senator Cohen, that is precisely what I was alluding to, was that the drawing of these lines then sets the tone and the standard for the drawing of the ward lines, the county lines and all of the other lines that precede that, so I think that therein lies a domino affect. So that once these lines are drawn, then the other jurisdictions can begin to draft lines, again giving the community of color an opportunity to organize and mobilize and have an opportunity, at least playing on a level playing field in terms of identifying candidates that can potentially serve those communities.

SEN. MOE: Any other questions of Mr. Davis? If not, thank you very much for appearing tonight.

Mr. Bill Wilson, St. Paul City Council, welcome.

MR. WILSON: Mr. Chairman and members of the committee it is my pleasure to address you this evening on this m ter of redistricting. It is certainly a very important undertaking on the part of the State – lays the foundation upon which all the elections in the State of Minnesota will be held. So, clear and decisive and

fair process going into redistricting is imperative. I, like Mr. Davis, have had the opportunity of working with Senator Pogemiller and Senator Cohen to have input into this process and we welcome that input. Seldom do citizens have the opportunity to have a hands-on experience to help shape the outcomes of these kinds of processes. Here in the State of Minnesota we are pleased to know we have this kind of open, inclusive process. It is important beyond that for the communities to know that this process is available. This again goes back to the fundamental question of inclusiveness and involvement of the people in our government. The cornerstone of that of course is in voting and the right to vote, as was the opportunity for you to vote to make a difference. I certainly as a person feel strongly about this. In my last election we won by 2 votes, and so we can appreciate the importance of each and every vote. My vote and the other individual's vote made a difference and so we take this very seriously. I appreciate the fact that this body takes it seriously. So, I'd like to encourage the committee would move forward with a plan. As Mr. Davis alluded to, it does lay the foundation for all the districting throughout the State, and if I am correct in this that the local jurisdictions cannot do districting until the State has completed its redistricting, so we anticipate the State's districting so we can in fact go forward. The people throughout the cities in St. Paul and Minneapolis and across the State are awaiting that opportunity. Again, I thank Mr. Chairman for the opportunity to testify. We were here on some late evenings, working, the citizens trying to have input and make a difference. We'd like to see the result of this go forward quickly.

SEN. MOE: Thank you. Are there any questions of President Wilson?

SEN. STORM: Mr. Chairman, Mr. Wilson, we appreciate you being here and appreciate also your support of the process as you have participated and given your insight. Have you had a chance to scrutinize the plan at all? Are you prepared to speak to what you feel is the value or propriety of the plan?

MR. WILSON: Of the plan in its totality?

SEN. STORM: Of the plan that Sen. Pogemiller just described and maps shown.

MR. WILSON: Only in very general terms. We were primarily focusing on districts, I was primarily focusing on districts, affecting the communities of color. We had some general experiences seeing the impact that had on other districts throughout the city and State, but fundamentally that was our experience.

SEN. MOE: Any other questions of President Wilson? Thank you very much.

Jim Mulder from the Association of Minnesota Counties.

MR. MULDER: Thank you Mr. Chairman, my name is Jim Mulder. I am the Executive Director of the Minnesota Association of Counties. We strongly support the Legislature in doing the redistricting and getting it done this session. It certainly will assist us and aid us in being able to do our work. We are very concerned about the timetable that is set forth and our ability to be able to do our job. So, we strongly support the process moving forward yet this session and hope it will be completed. We have

taken no stand on the merits of this, but certainly on the timing we certainly appreciate it.

SEN. MOE: Any questions of Mr. Mulder?

SEN. STORM: Mr. Chairman, Mr. Mulder, what are the time constraints that you and your people are under that would be impeded if we had a plan that was agreed upon, had good bipartisan support, had a lot of broader public inputs and have it completed by August 1st?

MR. MULDER: Mr. Chairman, Senator Storm, our preference is to have it done now. It wouldn't cause huge problems if it was August 1st, but I think the longer time frame that we have the better off that we are.

SEN. STORM: Mr. Chairman, Mr. Mulder, if we took until August 1st, then could we be assured of a plan that would have had scrutiny and would have been accepted as a fair plan by a broad group of people? Would you feel that would be a worthwhile venture?

MR. MULDER: Mr. Chairman, Senator Storm, I'm not in a position to make a judgment on that kind of a qualitative judgment. Whether its a better plan or not.

SEN. MOE: Are there any other questions of Mr. Mulder? If not, thank you very much.

Mr. Dick Tanner, did you indicate that you would like to make some comments? Welcome.

MR. RICHARD TANNER: My name is Richard Tanner. I work with the Minnesota Chippewa Tribe and looking at the map, it's very nice that in redistricting we are keeping the Reservation more or less intact within one senate district and will help. We have Senator Finn now who is out of LaPorte and may help him retain his seat in the respect that Leech Lake Reservation is within one senate district where before, it was in two. White Earth Reservation was in two senate districts before. Now it's in one senate district. Red Lake was kind of split in two senate districts. Now they are all essentially in two senate districts, which really does help a lot. It also helps in terms of having the house districts also within one district rather than being split up in two or three different districts. Speaking from experience, I think that it could help an Indian person if they decided to run for the House of Representatives, like I did in 1982. I lost by around 200 votes. But even the present, if I had that map now, if I had used that map in '82 I probably would have won, because that way, all the Reservation's villages are within one district. I think this would increase at least the chances of (inaudible portion). But it does open up in the future the opportunity for three Indian people to run in House seats and have a good chance of winning in the northern part of the State.

SEN MOE: Are there any questions of Mr. Richard Tanner?

SEN. STORM: Mr. Chairman, I am going to ask the same question of Mr. Tanner. I am as encouraged and excited as you are about the opportunities for Native Americans to have representation, but have you scrutinized the plans beyond those districts? Are you able to comment?

MR. TANNER: No, just like you, I haven't had an opportunity to look at the whole plan, just those districts which had large population of Indian people, including the urban areas. But outside of the Reservation areas and the urban areas I have not really looked at it.

SEN. MOE: Thank you very much Mr. Tanner, I appreciate your testimony.

Mr. Todd Otis.

MR. OTIS: Mr. Chair, Members of the Committee, thank you for the chance to testify. I'm Todd Otis, Chair of the DFL Party. I realize the enormity of the task in front of you and appreciate the fact that you are trying to pass a bill in time for the parties to get organized and avoid the chaos next spring that not having this resolved could bring about. We've been there before and I hope we can avoid that happening. I do come as a partisan and so I do look at a bill in terms of whether it is going to help increase DFL strength or reduce it. And there are problems within this proposal regarding DFL strength that make me not dance in the street about the proposal, with all due respect to the committee. You are cutting strength areas for the DFL for example on the Iron Range and in Minneapolis. You are opening up opportunities and a lot of them in areas where it has been traditionally hard for us to compete in, such as some of the suburban areas, and you pair more DFL members against each other than you do Republicans. And so as the DFL Chair, I speak only for myself as our Central Committee and our Executive Committee have not had an opportunity to discuss this, but I did feel it is important to be on the record. We have some excellent freshmen DFLers in the

House who are going to have to run against each other apparently. And I won't and can't go through the whole list but a number of match ups are occurring that are going to be painful. So, we appreciate though organizationally the prospect of getting the job done in time so we don't have two conventions and chaos next spring. With that I will conclude.

SEN. MOE: Any questions of Mr. Otis? Sen. Pogemiller.

SEN. POGEMILLER: Mr. Otis, do you oppose the plan?

MR. OTIS: Well, like I said our party has not had a chance to vote on it formally but those are my concerns.

SEN. POGEMILLER: Do you personally oppose the plan?

MR. OTIS: I'm not prepared, unfortunately. I don't have the burden of voting on it. I'm not here to do anything except express my concerns about it.

SEN. POGEMILLER: Mr. Otis, have you seen the plan?

MR. OTIS: Mr. Chairman, Senator Pogemiller, I've had the summary of the plan be explained to me so I understand what it does to DFL incumbents and Republican incumbents.

SEN. POGEMILLER: So, Mr. Chairman, it is safe to say that you are expressing some concerns based on a summary of the plan that was presented to you.

MR. OTIS: Yes, and I think the summary is enough for me to get a sense as to whether it makes it better or worse for Democrats and from what I have heard we are losing support in the Iron Range and the core city of Minneapolis, which are traditional DFL strong holds, and that concerns me, that is what I am here to express.

SEN. KNAAK: Mr. Chairman, you would agree then that whatever plan was adopted it would reflect the one vote one person philosophy that the Iron Range would lose some voting strength because of what is going on.

MR. OTIS: I'm just expressing my concern for the effect of the plan. I'm sure you can re-draw these lines that will minimize that, and all I'm saying is the effect of the, of this plan that I described today, indicates that we will be losing DFLers in strong areas.

SEN. KNAAK: Mr. Chairman, so it is clear in my own mind, what you are reacting to is the effect of the summary that we heard about today.

MR. OTIS: That is exactly right.

SEN. BENSON: Mr. Chairman, Mr. Chairman, why hasn't your Central Committee voted on this?

MR. OTIS: We aren't meeting until next September. We meet twice or three times a year.

SEN. BENSON: Would they like to have an opportunity to react to this?

MR. OTIS: I think I will let the Legislature make that decision.

SEN. MOE: Any other questions of Mr. Otis? Thank you very much Mr. Otis.

SEN MOE: Mr. Bob Weinholzer, you have equal time here.

MR. WEINHOLZER: Thank you Mr. Chairman, Bob Weinholzer, Chairman of the Independent Republicans. I have to admit that I just saw this material at 5:00 P.M. today for the first time, so it's very hard for me to give an opinion on it. It may very well be the fairest plan that has come out of the Legislature in the last 30 years. Not that that would take a whole lot, but it might very well be.

I was very interested to see all the cooperation of the different groups and the people testifying for this tonight. It seems like everyone was informed about it and cooperated on it except the I.R.'s. I did notice that. One of the statements that was brought up was the fact that we do have until March 1992 for the Legislature to actually redistrict. Now this will be one of the more important pieces of legislation to come out of this session, if it does, based on the fact that besides bonding there is no other legislation that will have an enforcement on following legislatures for the next 10 years. This I think makes it very important that this be well thought out, well planned, well discussed plan for redistricting that is fair to all parties concerned. I do have to say probably the hardest thing about this to try to determine if this is fair or not is the lack of maps. Because I have taken the descriptions here and I know one thing, I will be in a new district and so far I have read six of them and I still have not found where

I am going to be. And without a map I think it becomes extremely difficult to try to get a real feeling how fair these districts would be. So again, this may be a very, very good plan, it may be excellent, but I do think that we need not to rush this recklessly through and to take some time for full consideration and the opportunity for people throughout the entire State to come in and testify, since it does have an effect on laying the rules for the next 10 years.

SEN. MOE: Thank you. Any questions of Mr. Weinholzer?

MR. WEINHOLZER: Thank you.

SEN. MOE: Thank you. Is there anyone else who would care to make some comments? O.K.

SEN. POGEMILLER: Mr. Chairman, Senator Benson had asked earlier regarding the average. There was a typo on the deviation sheet passed out. I think the corrected version has been passed out. There were two districts that were flip flopped, district numbers, so this is the corrected version. I don't have the average, but I believe that the largest positive deviation is 1.57, the largest negative deviation is 1.85, and the range is 3.42. And I believe, and maybe Mr. Wattson can help me, but I believe the courts have basically said that as long as you stay within a range of 10 you are doing good work, or you are doing acceptable work.

MR. WATTSON: Mr. Chairman, Sen. Pogemiller. What the courts have said is that if the overall range of a legislative plan is less than 10% the plan will not be found to be prima facie invalid on population grounds. It could be that a plan that had a less than

10% overall range was invalid because it discriminated against minorities for example, but it would not be subject to attack simply on failure to meet equal population requirements. So the maximum level for the court is 10% and this plan has an overall range of 3.42%, with the largest positive deviation being 1.57% and the largest negative being 1.85%. Each is under the 2% you established for yourself in the concurrent resolution. 1.57 and 1.85.

SEN. KNAAK: There is in passing before I forget a typo on page 36, line 21.

SEN. POGEMILLER: Mr. Chairman.

SEN. MOE: Excuse me, did you want a response to that?

SEN. KNAAK: The author can offer an amendment, I can.

SEN. MOE: I think there are a half a dozen or more. Maybe that would be appropriate for him to go through other typos or technicals.

SEN. POGEMILLER: Yes, I believe I would offer an amendment.

MR. WATTSON: Mr. Chairman, members of the committee. The ones that have been called to my attention so far. The first is on page 11, line 18, or 17 and 18, where it says "that portion of Lac Que Parlo County consisting of" blank, just delete all of that, there is no Lac Que Parlo County....

(Remainder of meeting not transcribed.)

UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

FOURTH DIVISION

Jeanette Booker, et al,	)	
	)	
Plaintiffs	)	
vs.		MEMORANDUM ORDER
	)	
Special School District No. 1,	)	4-71 Civil 382
Minneapolis, Minnesota, et al,	)	
	)	
Defendants	)	
	)	

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Defendant's have moved for an order dissolving the permanent injunction and dismissing the action. Plaintiff's have moved for supplementary relief, specifically for an order requiring defendant's to submit to the Court a revised integration plan on or before June 15, 1983 that eliminates the present exchange program between North and Edison High Schools.

The Court heard testimony on May 17, 1983. The Court has considered the testimony of the witnesses, the exhibits and affidavits, the arguments of counsel and the post hearing briefs.

This Court's Order of June 17, 1981 noted that defendant's were engaged in long range planning for the five year period 1982-1986 which would probably result in substantial changes in the organization of the school district. Defendant's completed the long range plan and submitted a separate desegregation/integration plan

for the same period. The Order of June 17, 1981 provided

> "that said desegregation/integration plan will be designed to assure that, for the school years 1982-86, no school will have a minority student population that exceeds the District-wide average of minority students for grade levels contained in that school by more than fifteen percent (15%) and that the student population of every school in the District will be significantly involved in the District's desegregation/integration effort."

As noted in the Order of June 22, 1982 plaintiff's had four (4) main objections to the desegregation/integration plan. The first concerned the North-Edison programmatic desegregation program. A second objection was directed to the closing of Central High School. Plaintiff's now seriously challenge the North-Edison exchange and renew their suggestion that reconsideration be given to the Central closing.

The 15% requirement presents a problem for North (and this has been true for most of the course of this litigation despite changes in percentages) because of housing patterns in the North area.

The exchange program provides for North and Edison students in the 9th, 10th and 11th grades to attend the other school for one trimester in each year. The student may decide to remain at the other school for the entire year.

The Order of June 22, 1982 expressed concern about the exchange program at North-Edison and on July 22, 1982 in denying plaintiff's motion for reconsideration the Court stated that it would order modification if the plan proved unacceptable.

This case has been pending since 1971. After a two week trial in the Spring of 1972 the Court on May 24, 1972 issued its initial Order granting declaratory and injunctive relief. Through

the years there have been additional hearings, the consideration of motions and the issuance of Orders modifying or supplementing the earlier Orders.

The Order of June 17, 1981 stated that the action would be dismissed on June 15, 1982 in the absence of objections to the desegregation/integration plan for the 1982-1986 school years. The Order of June 22, 1982 stated that the Court would view a motion to dismiss unfavorably but that it had no intention to retain jurisdiction indefinitely. The Order stated further that if there were no objections which support retention of jurisdiction that the Court would dismiss the lawsuit on June 15, 1983.

There was testimony at the hearing on May 17 that there are different teaching methods at the 2 schools, that the speed of progress varies, that there are delays at the beginning of a trimester and that time is lost. There was testimony that computerization in the future may help solve problems, that a remedial program can be worked out and that the exchange will work better next year (1983-1984). There was testimony that the exchange produced more absenteeism (North to Edison) that students felt more lonely, that students preferred to be with the same students or class for the whole year and that the exchange interfered with interest in extra-curricular activity at the home school.

There was testimony from one white Edison student that she had decided to transfer permanently to North. There may be others. Witnesses stated that the exchange will lead to integration, that a new curriculum mandate would be of help, that remedial programs will help, that permission to select the trimester could be worked out administratively and that if there were no exchange that North would be 55% to 57% minority. Superintendent Green stated that more orientation will help and that this will take place in the fall of 1983.

Other witnesses stated that the exchange is a fine program and the program has great benefits but some individual students may be hurt.

As reflected in the June 22, 1982 Order the District hopes that in time the mandatory programmatic desegregation may become unnecessary because students will voluntarily cross the attendance districts to take advantage of the educational programs at either of the schools.

As to a possible remedy two witnesses stated that the exchange be eliminated as to the 9th grade. This would leave only the 10th and 11th grades as part of the exchange. There was general agreement that Edison should not be closed and that North should not be limited to 9th and 10th grades and Edison to 11th and 12th grades. One or more witnesses stated that the boundary lines should be changed. The Court is not clear as to whether the suggested boundary change follows the earlier 1982 proposal. That proposal extended the attendance district for Edison from east to west across the full width of the city, excluded students north of Saint Anthony Boulevard who would have normally attended Edison and included portions of the Franklin Avenue Indian Community area in south Minneapolis, the predominantly black Glenwood Project area and the Bryn Mawr community on the western border of the city. This proposal generated substantial opposition from all of the affected areas, some of which may be characterized as "political". Superintendent Green testified that he much prefers the exchange program to other alternatives.

The Minnesota State Department of Education has established a policy to ensure the elimination of racial segregation and to provide equal educational opportunity. In his affidavit of April 29, 1983 the Commissioner stated that the Department of Education is willing and able to assume the duty of monitoring the

further implementation of the District's desegregation/integration plan. In a February 9, 1983 letter to Superintendent Geeen, Commissioner Feda stated that he and his staff had reviewed the five year plan and found that it satisfies the applicable Rule and that the implementation of the plan would be monitored in accordance with the Rules of the State Department of Education.

The Minneapolis Citizens Committee on Public Education has established a task force to review the progress of the 5 year plan. The Court assumes that this includes the desegregation/ integration part of the plan.

Plaintiff's suggest that the exchange program is unprecedented and has not been tried anywhere else in the country. The Hale-Field pairing in 1970 preceded the commencement of this lawsuit and was an early experiment in attempting integration/segregation. That pairing, however, involved an exchange for the entire school year. There was considerable initial opposition to that pairing. There was later general agreement that the pairing had been successful and that the integration/desegregation process had been furthered.

The June 22, 1982 Memorandum reviewed in great detail the cost of renovating and rehabilitating Central High School and the relationship of these costs to other high schools. The May 24, 1983 affidavit of Marvin L. Tenhoff, Director of Facilities and Plant Planning, states in detail cost estimates and additional factors which would have to be considered in reopening Central. The District was initially correct in its assessment of which schools in the long range program required closing. The Court reaffirms its earlier decision on the closing of Central.

In its latest decision on March 31, 1983 the Eighth Circuit Court of Appeals emphasized a School Board's commitment to ensuring that equal educational opportunity is provided to all

students within a school system. Some 7 or 8 years ago, 2 and possibly 3 members of the School Board opposed integration/ segregation and any remedy that the Court might impose. The Court is now convinced that the majority, if not all, of the School Board and the Superintendent and his staff will support the constitutional rights of the students and will respect the rights of all of our citizens, including students, to the equal protection of the law as required by the Constitution.

The Court believes and finds that the District should have the opportunity for autotomous compliance with constitutional standards, that the State Department of Education should and will monitor the implementation of the long range plan which includes integration/desegregation and that the North-Edison exchange program satisfies constitutional standards.

The complaint in this case was filed in 1971 and a number of trials, hearings and other proceedings have continued since 1972. The Court appreciates the dedication of plaintiff's and their counsel to the integration/desegregation process and to the maintenance and preservation of constitutional rights.

IT IS ORDERED:

1. That the motion of defendant's to dissolve the permanent injunction and to dismiss the action be granted.
2. That the motion of plaintiff's for supplementary relief requiring defendant's to submit to the Court a revised integration plan by June 15, 1983 that eliminates the North-Edison exchange program be denied.

June 8, 1983

/s/
United States Senior District Judge